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OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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:
PETITION OF CHELSEA RESIDENTIAL :
ASSOCIATES, LLC :
(an affiliate of EYA) :
:
:
-----X

Case No. G-892

A hearing in the above-entitled matter was held on
June 27, 2011, commencing at 9:50 a.m., at the Council Office
Building, 100 Maryland Avenue, Room 200, Rockville, Maryland
20850 before:

Lynn A. Robeson, Hearing Examiner

A P P E A R A N C E S

ON BEHALF OF THE APPLICANT:

Robert Harris, Esq.
Holland & Knight
3 Bethesda Metro Center, Suite 800
Bethesda, Maryland 20814

ON BEHALF OF THE OPPOSITION:

Dave Brown, Esq.
Knopf & Brown
401 East Jefferson Street, Suite 206
Rockville, MD 20850

Page

WITNESSES:

Marty Wells	5/8/9/12/28
Expert in Transportation Planning/Engineering	34/62/69/76
Wells & Associates	
1420 Spring Hill Road	
McLean, Virginia	
Song Volk	9/34/76
Neighbor in Opposition	111/131
8504 Springvale Road	
Silver Spring, Maryland 20910	
Jim Teller	78/105/111
Neighbor in Support	
9104 Kingsbury Drive	
Silver Spring, Maryland 20910	
Robert Bacon	127/130/131/135
Neighbor in Support	
504 Dale Drive	
Silver Spring, Maryland 20910	
Leslie Hansley	137
Neighbor in Support	
607 Ellsworth Drive	
Silver Spring, Maryland 20910	
Mark Stires	140/145/155
Expert in Civil Engineering	
Bowman Consulting	
2121 Eisenhower Avenue	
Alexandria, Virginia 22314	
Michael Gurwitz	157/162/185
Neighbor in Opposition	227/229
8607 Springvale Road.	
Silver Spring, Maryland 20910	
Krista Lutz	231/232
Neighbor in Opposition	
710 Woodside Parkway	

Silver Spring, Maryland 20910

A P P E A R A N C E S (Continued)

Page

WITNESSES:

Victoria Pierce
Neighbor in Opposition
501 Pershing Drive
Silver Spring, Maryland 20910

237/252

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P R O C E E D I N G S

MS. ROBESON: This is a public hearing in the matter of Local Map Amendment G-892, an application filed by the Chelsea Residential Associates, LLC. The applicant is requesting a re-zoning of property from the R-60 Zone to the RT-15 Zone for property located at 630 Ellsworth Avenue, Silver Spring. The property's legal description is Lot 58, Evanswood, Section 1.

Will the parties identify themselves for the record?

MR. HARRIS: Good morning. For the record, Bob Harris of Holland & Knight representing the applicant.

MS. ROBESON: Okay.

MR. BROWN: Good morning. David Brown, Knopf & Brown for the Seven Oaks-Evanswood Citizens Association.

MS. ROBESON: All right.

MR. BROWN: Also, I want to note that my right-hand woman, Anne Spielberg, is not here today. She's in Atlanta and she's been replaced by my right-hand man, Michael Gurwitz.

MS. ROBESON: Okay.

MR. GURWITZ: Good morning.

MR. BROWN: And Michael has some exhibits that he wants to present to you this morning based on your request.

MS. ROBESON: All right.

1 MR. BROWN: I'd like him to explain that.

2 MS. ROBESON: Okay. Well, what we're going to do
3 first -- first, I hope everybody made it through the Beltway
4 because the traffic was pretty bad. We're going to start
5 with Mr. Harris' experts. He's not finished his case. Were
6 you going to redirect Mr. Youngentob today also or do you
7 want to --

8 MR. HARRIS: No. We do not need to do that.

9 MS. ROBESON: All right. We're going to start
10 with Mr. Harris' experts, any citizen witnesses you have and
11 then, Mr. Gurwitz, you'll be the star witness to begin the
12 opposition whenever Mr. Brown wants to, okay? All right.
13 Mr. Harris?

14 MR. HARRIS: Thank you. As our first witness
15 today, we'd like to call Marty Wells.

16 MS. ROBESON: Okay. Please raise your right hand.
17 (Witness sworn.)

18 MS. ROBESON: Okay. Go ahead, Mr. Harris.

19 DIRECT EXAMINATION

20 BY MR. HARRIS:

21 Q Mr. Wells, would you tell us your name, company
22 and business address?

23 A Yes. My name is Marty Wells. I'm President of
24 Wells & Associates, and my office is located at 1420 Spring
25 Hill Road in McLean, Virginia.

1 Q And what is your profession?

2 A I'm a registered professional engineer, a traffic
3 engineer and transportation planner.

4 Q And have you been admitted as an expert in
5 transportation planning, traffic engineering here in
6 Montgomery County on prior occasions?

7 A I have.

8 MR. HARRIS: I think Mr. Brown has already
9 stipulated to Mr. Wells' credentials as an expert and I
10 think he knows him as well as I do so --

11 MS. ROBESON: I've also seen him testify so.

12 MR. BROWN: I would like to go through his
13 qualifications briefly despite that stipulation because I
14 understand that Mr. Harris is going to potentially be
15 challenging Ms. Cirillo's expertise.

16 MS. ROBESON: Well, I guess my question is what's
17 the basis of your challenge? Do you --

18 MR. BROWN: I just want on the record what his
19 qualifications are. That's all.

20 MS. ROBESON: Oh, I see. Can you go through his
21 qualifications, Mr. Harris?

22 MR. HARRIS: Sure.

23 BY MR. HARRIS:

24 Q How long have you been in the practice of
25 transportation planning?

1 A Only 35 years.

2 Q And what degrees do you have?

3 A I hold a bachelor of science in civil engineer
4 degree from Wayne State University and a master of science
5 in civil engineering from Carnegie Mellon University.

6 Q And are you registered in any capacity as a
7 professional?

8 A Yes. I'm licensed to practice as a professional
9 engineer in the State of Maryland, 11 other states and the
10 District of Columbia.

11 Q And are you a member of the Institute of
12 Transportation Engineers?

13 A I am.

14 Q And have you managed or prepared traffic studies
15 in Montgomery County?

16 A I have.

17 Q And in what capacity are those traffic studies
18 prepared?

19 A I've managed the work on, for example, downtown
20 Silver Spring, Rock Spring Center, Bethesda Road, the Chevy
21 Chase Bank headquarters when we used to have a Chevy Chase
22 Bank, Geico in Friendship Heights, Twin Brooks Commons,
23 Strathmore Performing Arts Center, Shady Grove Adventist
24 Hospital, Suburban Hospital, Montgomery Community College
25 and German School of Washington for example.

1 Q And have you testified as an expert in
2 transportation and land, transportation planning in zoning
3 matters?

4 A Yes. Most recently, in the marathon Suburban
5 Hospital case.

6 Q And others in Montgomery County as well?

7 A Yes.

8 Q And others in the area?

9 A Yes. I've --

10 Q Could you --

11 A -- testified before virtually all of the major
12 jurisdictions in the Washington Metropolitan Area. I've
13 been qualified as an expert in Montgomery County, Prince
14 George's County, Howard County, Anne Arundel County and
15 other jurisdictions. The District of Columbia.

16 Q And are you familiar with the Local Area
17 Transportation Review guidelines in Montgomery County?

18 A I am.

19 Q And are you familiar with the Policy Area Mobility
20 Review standards in Montgomery County?

21 A I am.

22 Q Thank you. I think that --

23 MS. ROBESON: Mr. Brown?

24 CROSS-EXAMINATION BY COUNSEL FOR OPPOSITION

25 BY MR. BROWN:

1 Q Mr. Wells, I didn't hear anything about your
2 experience in transportation engineering with respect to
3 teaching, research, publications or awards. Do you have
4 anything to add in any of those fields?

5 A I am not a teacher.

6 Q Research?

7 A I, I do not conduct research. My experience is
8 based on the practical transportation impact studies.

9 Q Professional publications and awards?

10 A Yes. I have published.

11 Q What have you published?

12 A I've been published by the Institute of
13 Transportation Engineers, the Transportation Research Board.

14 MR. BROWN: I have nothing further.

15 MS. VOLK: Can I ask some questions?

16 MS. ROBESON: Are you represented by Mr. Brown?

17 MS. VOLK: No.

18 MS. ROBESON: Yes, you may.

19 MS. VOLK: Do I have to go stand up over there?

20 MS. ROBESON: Yes, please.

21 MS. VOLK: Song Volk, 8504 Springvale Road.

22 MS. ROBESON: Can you speak up just a little bit?

23 MS. VOLK: Okay, sorry. Song Volk, 8504
24 Springvale Road.

25 CROSS-EXAMINATION BY MS. VOLK

1 BY MS. VOLK:

2 Q Have you ever developed any traffic or
3 transportation models or metrics?

4 A Yes. It's a standard part of our practice that we
5 develop models for evaluating traffic impacts of private
6 real estate developments and residential developments,
7 mixed-use developments, hospitals, independent schools and
8 so forth.

9 Q So have your --

10 A That's a routine part of our work.

11 Q Have your developed models and metrics have been
12 incorporated or utilized by a State or governmental
13 organization as a standard?

14 A As a practical matter, we follow the guidelines
15 that are established by local governments. For example, in
16 this case, we used the Local Area Transportation Review,
17 Policy Area and Mobility Review guidelines. We did not
18 attempt to develop a separate set of standards. We used the
19 guidelines that were established and adopted by the Planning
20 Board.

21 Q Okay. So therefore, you used, okay, guidelines
22 and metrics already developed by the State.

23 A In this case, by the Planning Board which we are
24 obligated to do in these cases.

25 Q How many times have you published?

1 A Oh, half a dozen times.

2 Q Half a dozen. Are you considered a thought leader
3 on traffic engineering and traffic transport mode?

4 A I'm considered thoughtful.

5 Q Okay. Are you recognized as a thought leader in a
6 domestic or international body of traffic management?

7 A No. In this case, there are no international
8 implications to the neighborhood traffic impacts that we're
9 going to discuss today.

10 Q Do you routinely attend conferences as a speaker
11 at seminars or thought leadership organizations or holdings
12 or meetings?

13 A Yes. I just got back from the annual Congress-
14 driven New Urbanism meeting in Madison, Wisconsin.

15 MS. ROBESON: Excuse me. You can't talk amongst
16 each other so --

17 MS. VOLK: Sorry. I didn't know the rules.
18 Sorry.

19 UNIDENTIFIED VOICE: I'm sorry.

20 BY MS. VOLK:

21 Q Were you a speaker at any of these conferences or
22 seminars or thought leadership meetings?

23 A I have been in the past. I was not in Madison.

24 Q Can you give me like just roughly, half a dozen
25 times have you been a featured speaker or a speaker?

1 A On traditional neighborhood development, TND, I do
2 a fair amount of work with the Congress for the New
3 Urbanism. I've done a lot of work on mixed-use town
4 centers.

5 Q As a speaker?

6 A Yes. I've spoken before planning commissions and
7 interest groups, most recently in Alexandria.

8 Q Okay. Thank you.

9 MS. ROBESON: Okay. Mr. Harris, any redirect?

10 DIRECT EXAMINATION (Continued)

11 BY MR. HARRIS:

12 Q Have you participated in Montgomery County in the
13 development of LATR standards and guidelines that Montgomery
14 County uses?

15 A Yes. From time to time as the guidelines are
16 updated, we'll participate, either me or members of my firm
17 will participate with Staff as we, as they consider means
18 and methods of updating their, their guidelines.

19 MR. HARRIS: Nothing further.

20 MS. ROBESON: Okay. I'm going to accept Mr. Wells
21 as an expert in transportation planning and engineering.

22 MR. HARRIS: Thank you.

23 BY MR. HARRIS:

24 Q Mr. Wells, are you familiar with Local Map
25 Amendment G-982?

1 A I am.

2 Q And did you prepare a traffic study in connection
3 with this?

4 A I worked with Mr. Chris Cabott who was the
5 principal author of our work.

6 Q And are you familiar with and have you visited the
7 property that is the subject of this application?

8 A I have.

9 Q And are you familiar with turn restriction
10 movements and access and circulation in the neighborhood?

11 A I am.

12 Q Can you describe the site and its boundaries? And
13 I think we have an exhibit that we can have marked.

14 UNIDENTIFIED VOICE: A prior exhibit?

15 MR. HARRIS: Hum? No. Marty brought one. Can
16 we --

17 BY MR. HARRIS:

18 Q Would you identify that board that you put up on
19 the easel for us?

20 A Yes. This is an exhibit with the title "Vehicle
21 Routes and Pedestrian Paths to and from the CBD". It
22 indicates the location of Chelsea Court.

23 Q Okay.

24 MS. ROBESON: Okay.

25 MR. HARRIS: Okay. May we have that "Vehicle

1 Routes and Pedestrian Paths" labeled as Exhibit No. 167 I
2 think?

3 MS. ROBESON: Okay. Mr. Brown, any objections?

4 MR. BROWN: No objection.

5 (Exhibit No. 167 was marked for
6 identification and received into
7 evidence.)

8 BY MR. HARRIS:

9 Q And would you then describe this site and the
10 access and circulation?

11 A Yes. Chelsea Court is located south of Springvale
12 Road, east of Ellsworth Drive, west of Pershing Drive. The
13 proposal is to develop 76 townhouse units and to retain the
14 existing single-family structure at that southeast corner of
15 the site. It would be, this development would be organized
16 along a new east-west internal street. It would have
17 driveways on, at the west end at Ellsworth Drive and on the
18 east end on Pershing Drive.

19 The access plan would respect the existing
20 neighborhood transportation or neighborhood traffic
21 management regulations. For example, Ellsworth Drive is a
22 two-way street north of Springvale. Just south of
23 Springvale and north of the library driveway, it is one-way
24 southbound. At the location just south of the proposed new
25 driveway, southbound traffic on Ellsworth is forced to turn

1 right onto what I'll call Spring Street. It cannot continue
2 through to the south on Ellsworth Drive. That's a measure
3 to prevent cut-through traffic cutting through the
4 residential neighborhood to the north on its way to the
5 Silver Spring CBD.

6 Along Pershing Drive, there's a do not enter sign
7 just north of Cedar Street so that block operates
8 effectively one-way southbound. You cannot go northbound
9 from the Silver Spring CBD up Pershing through the
10 residential neighborhood. At Springvale Road and Pershing
11 Drive, if you're traveling eastbound on Springvale, you're
12 compelled to turn left. If you're headed southbound on
13 Pershing, you're compelled to turn right.

14 I've shown here on arrows the permitted paths
15 coming to and from Chelsea Court. In the inbound direction,
16 vehicles can turn either left or right into the site on
17 Ellsworth. They, exiting onto Ellsworth, you'd have to turn
18 left and if one obeys the no left turn sign at the junction
19 of Spring and Ellsworth, you'd have to stay to the right
20 onto Spring Street, so that would direct traffic exiting
21 Chelsea Court onto southbound Ellsworth and then right onto
22 Spring Street and then towards Colesville Road.

23 Entering into the east driveway off of Pershing,
24 one would have to approach from Springvale from the
25 direction of Wayne Avenue, and you could make that quick

1 left and then a quick right in. To exit, one could either
2 turn right or turn left. If you turn right, you could go
3 down Pershing to Silver Spring CBD if you turn left onto
4 Cedar. If one turns left out of the Chelsea Court, you
5 could either turn right on Springvale, left on Springvale or
6 north on Pershing Drive.

7 There's been some discussion of perhaps limiting
8 this to a right in, right out. If that were the case, if
9 one could only turn right out, these paths through the
10 residential neighborhood would not be possible. There is
11 also discussion about whether the east end of the, of east-
12 west internal roadway would be feasible under the Historic
13 Preservation regulations. If that were the case, all the
14 traffic would enter and exit off of Ellsworth at the drive.

15 The traffic volumes that will be generated by
16 Chelsea Court are very modest. In terms of the volumes,
17 whether the east driveway is restricted to right in, right
18 out or if all of the traffic would have to come to and from
19 the project on Ellsworth, the traffic impacts would be
20 modest and would be well within the congestion standard as
21 established by the Local Area Transportation Review
22 guidelines, so it would work under either circumstance.

23 MS. ROBESON: If it was limited to the western, if
24 Private Drive A was limited to access off of the western
25 side, did you do a queuing analysis for the peak hour or are

1 you just talking in terms of volume of trips?

2 THE WITNESS: Well, we're talking about the
3 critical lane volume calculations.

4 MS. ROBESON: Right.

5 THE WITNESS: The volumes on Ellsworth are very,
6 very low. They're less than 100. Going by memory, I think
7 there's about 60-some trips in the, in the peak hours. I
8 don't anticipate any queuing issues at the driveway.

9 MS. ROBESON: Okay.

10 THE WITNESS: Mind you, I think the best plan is
11 to have driveways on both Pershing and Ellsworth but in the
12 alternative, it's still a workable plan.

13 BY MR. HARRIS:

14 Q Mr. Wells, are you familiar with transit service
15 in the area?

16 A Yes. There's bus service along Colesville Road,
17 Wayne Avenue, Cedar Street and Dale Drive. There are
18 passenger waiting shelters at the intersections of
19 Colesville and Spring Street and Wayne Street and Springvale
20 Road. The Metro station and MARC station are located to the
21 south of Chelsea Court. It's about 2600 feet or about a
22 half a mile away. We did not consider the Purple Line in
23 our analysis but we do note that stations are planned along
24 the preferred alignment on Wayne and Fenton and Wayne and
25 Dale, and we do notice, from our field observations, that

1 neighborhood residents do indeed walk to and from their
2 neighborhood to the Silver Spring CBD and the Metro station.
3 This neighborhood is very walkable. In fact, it receives a
4 walk score of 89 out of 100 from walkscore.com.

5 Q I think you mentioned earlier that you prepared a
6 traffic analysis consistent with the LATR and PAMR standards
7 of the County. Can you explain that a bit?

8 A We did. That's documented in two reports, one
9 dated November 4, 2010 and a second dated March 18, 2011.

10 Q And can you describe the results of the study?

11 A Yes. Again, it's worth repeating, the scope of
12 the study was established in consultation with Maryland-
13 National Capitol Park and Planning Commission Transportation
14 Division staff. We followed the LATR/PAMR guidelines. Our
15 studies were reviewed and accepted and approved by Park and
16 Planning as well as the Department of Transportation. We
17 evaluated existing and future traffic conditions with and
18 without Chelsea Court at eight offsite intersections. We
19 took into account traffic that is currently generated by the
20 86 students at Chelsea School and traffic that will be
21 generated by seven pipeline projects. These are projects
22 that have been approved in the area but are not yet built.

23 We found that Silver Spring and the Chelsea Court
24 site in general is served by a connected network of streets.
25 The one-way streets and turn restrictions that I described

1 prevent Silver Spring CBD traffic from cutting through the
2 surrounding residential neighborhood on Pershing and
3 Ellsworth Drive. The Chelsea Court plan respects this
4 neighborhood traffic management plan and proposes no changes
5 to it.

6 Chelsea Court and the surrounding neighborhood are
7 served by numerous Metro bus, Ride-On bus lines as well as a
8 Maryland Transit Administration bus line. I mentioned the
9 location of the Silver Spring Metro Rail and MARC station.
10 The neighborhood is very walkable.

11 Currently, all but one of the eight study
12 intersections operate within their congestion standards
13 during both the morning and afternoon peak hours. The
14 exception is the Colesville Road/Dale Drive intersection
15 which operates above the standard during the p.m. peak hour.
16 Montgomery County and their Capital Improvement Program, or
17 CIP, will construct, in Fiscal Year 2012, a third westbound
18 lane at the Colesville/Dale intersection which will cause
19 this intersection to operate within the congestion standard
20 at all times of day.

21 The seven pipeline projects will generate over
22 2,000 a.m. peak hour trips and 3200 p.m. peak hour trips
23 when they're complete and fully occupied.

24 MS. ROBESON: And that was which fiscal year?

25 THE WITNESS: The improvement at Colesville and

1 Dale is in Fiscal Year 2012.

2 MS. ROBESON: Is that for beginning of
3 construction in 2012?

4 THE WITNESS: That's when it will be constructed,
5 and we did confirm that with the department, Montgomery
6 County Department of Transportation.

7 MS. ROBESON: Okay.

8 THE WITNESS: All study intersections would
9 continue to operate within their congestion standard during
10 both the a.m. and p.m. peak hours in the future with the
11 additional traffic at the pipeline projects would generate
12 and the improvement that I just described.

13 We took traffic counts on Tuesday, December 14,
14 2010 that showed that the Chelsea School, with the then
15 current enrollment of 86 students, actually generated 58
16 a.m. peak hour trips and 28 p.m. peak hour trips. As you
17 probably know, the Chelsea School special exception, as it
18 stands now, has an enrollment cap of 200 students. 200
19 students, based on what we observed, the observed rates
20 would generate 134 a.m. peak hour trips and 66 p.m. peak
21 hour trips. The 76 townhomes and one single-family home
22 proposed for Chelsea Court would generate 37 a.m. peak hour
23 trips and 64 p.m. peak hour trips.

24 By the way, that's based on the countywide trip
25 generation rates, not the Silver Spring CBD rates. I'm not

1 confused where we are. I know we're in the County, not in
2 the CBD, by the fact that we're on the north side of Cedar
3 Lane rather than on the south side.

4 MS. ROBESON: Right.

5 THE WITNESS: So I think --

6 MS. ROBESON: What projects in the, for your
7 background counts, did you take any pipeline projects from
8 the CBD?

9 THE WITNESS: Yes. And City Place is one of them
10 for example. Would you like me to list them for you?

11 MS. ROBESON: Well, I would like to know what you
12 took into account within the CBD, yes.

13 THE WITNESS: Bear with me, please.

14 MS. ROBESON: For some reason, I'm not able to
15 locate your 2011 update but if you could list them, that
16 would be good.

17 THE WITNESS: Cameron House, United Therapeutics,
18 LBG and Fillmore Live Nation, City Place, their office
19 development, Veterans Plaza, the Silver Spring Library and
20 8415 Fenton Street.

21 MS. ROBESON: Okay.

22 BY MR. HARRIS:

23 Q And were those the background projects that Park
24 and Planning data indicated you were to include?

25 A Right. As is standard practice, we ask Park and

1 Planning Transportation Division staff for a list of
2 pipeline projects and that's what they supplied to us.

3 MS. ROBESON: Okay.

4 BY MR. HARRIS:

5 Q Okay. All right. If you would then continue with
6 your comparison of the trip generation for the proposed
7 project, comparing it with the existing Chelsea School and
8 the Chelsea School if completed under the special exception.

9 A Yes. I know this is terribly dry stuff. I will
10 attempt to do that. The 76 townhomes and the one single-
11 family home proposed here at Chelsea Court would generate 37
12 a.m. peak hour trips and 64 p.m. peak hour trips. Again,
13 that's based on the countywide rates.

14 And by the way, these rates were derived by Park
15 and Planning staff based on actual counts and actual
16 townhouse developments in the County. These were developed
17 in the early 1990s. I believe there's some testimony that
18 these are based on the ITE "Trip Generation, 8th Edition".
19 That didn't even exist when these rates were established so
20 they're based on actual ground counts here in Montgomery
21 County. They're not based on Baltimore information or
22 California information or any international information.
23 They're not based on Moscow or Paris or London or Caracas.

24 MS. ROBESON: I get it.

25 THE WITNESS: The Chelsea Court would generate 21

1 fewer a.m. peak hour trips and, but 36 more p.m. peak hour
2 trips than the current 86 student enrollment. If you
3 compare it to the possible 200 student enrollment, Chelsea
4 Court would generate 97 fewer a.m. peak hour trips and 2
5 fewer p.m. peak hour trips than the maximum 200 students
6 permitted under the approved special exception. And I might
7 add that the trips that this residential development would
8 generate would be less impactful than, if that's a word, my
9 editor wife probably would correct me, but it would have
10 less impact than the more intense, more sharply peaked
11 school peak hours at peak times.

12 We assigned these Chelsea Court trips to the
13 public street network based on procedures as specified in
14 the LATR guidelines. All of these trips will not be
15 destined to Virginia or to the Life Sciences Center as some
16 have commented. Chelsea Court trips will be distributed to
17 the Silver Spring and Bethesda CBDs elsewhere in Montgomery
18 County, to neighboring counties in Maryland and Virginia as
19 well as the District of Columbia. In fact, according to
20 Park and Planning, nearly a third of the trips that are
21 generated in this general area are destined to the District
22 of Columbia.

23 BY MR. HARRIS:

24 Q The distribution for projected traffic, was that
25 your conclusion or is that what Park and Planning directed

1 you to do?

2 A Again, that's part of the LATR guidelines.
3 They're the super district distributions that we're
4 compelled to use in our analyses and that's what we did.
5 Given the modest number of trips that Chelsea School is
6 expected to generate, you won't be surprised to learn --

7 MS. ROBESON: Wait. Chelsea School is?

8 THE WITNESS: Excuse me. Given the modest number
9 of trips that Chelsea Court is expected to generate, you
10 won't be surprised to learn that all of the study
11 intersections would continue to operate in the future within
12 the congestion standards during both the a.m. and p.m. peak
13 hours.

14 BY MR. HARRIS:

15 Q Can you tell us about the Policy Area Mobility
16 Review implications?

17 A Yes. Applicants in the Silver Spring Takoma Park
18 policy area are required by PAMR to mitigate 10 percent of
19 the net additional trips that would be generated by the
20 projects or in this case, 10 percent of 36 trips for four
21 trips. Our earlier, our initial traffic study made this
22 calculation based on estimates of Chelsea School trips. Our
23 update took into account actual field observations, so
24 there's a difference between five trips and four trips in
25 this calculation.

1 MS. ROBESON: And you took it from Chelsea School
2 with the existing enrollment --

3 THE WITNESS: The 86 students.

4 MS. ROBESON: -- versus the potential under the
5 special exception.

6 THE WITNESS: Correct.

7 MS. ROBESON: Okay.

8 THE WITNESS: Correct. If we based it on
9 potential trip generation based on 200 students, this site
10 would generate no net additional trips.

11 MS. ROBESON: Okay.

12 THE WITNESS: But we based it on the 86 students.

13 Each of these trips is valued by Park and Planning at
14 \$11,300 a piece. EYA proposes to either make a \$45,200
15 payment, that's the simple math of four times 11,300, make
16 that payment to the County or alternatively, to make \$45,200
17 in transportation improvements in the immediate
18 neighborhood.

19 Based on all of this, I've, or we've concluded
20 that the public roads will adequately accommodate projected
21 future traffic including the additional trips that would be
22 generated by, at Chelsea Court. I'd note that we still have
23 to go through, or EYA still has to go through the, in the
24 event that this Zoning Map Amendment is approved, would have
25 to go through the subdivision review process and they would

1 have to meet the adequate public facilities test at that
2 time, and that would be based on a report similar to the one
3 we prepared utilizing appropriate mitigation measures.
4 We've also concluded that the pedestrian neighborhood
5 network in the project vicinity operates safely and
6 efficiently since the streets and sidewalks and bikeways and
7 crosswalks are provided in an interconnected network
8 connected to the CBD.

9 Park and Planning Transportation staff, in their
10 report dated May 2, 2011, confirms our findings and
11 concludes that the subject application satisfies the LATR
12 requirements of the APF test. Montgomery County Department
13 of Transportation, in their review letter, does not object
14 to this proposed re-zoning.

15 MR. HARRIS: Ms. Robeson, I have two exhibits I'd
16 like to have marked and introduced at this time if I may.
17 One is an April 22 letter to --

18 MS. ROBESON: Okay.

19 MR. HARRIS: -- to Rose Krasnow, the Chair of Park
20 and Planning's Division, or Area 1 from DOT I'll say. So if
21 we could have that marked as Exhibit 168 is it?

22 MS. ROBESON: 8.

23 MR. HARRIS: Thank you.

24 MS. ROBESON: Mr. Brown, have you seen this?

25 MR. BROWN: I have no objection to this.

1 MS. ROBESON: Okay. So that will be 168.

2 (Exhibit No. 168 was marked for
3 identification and received into
4 evidence.)

5 MS. ROBESON: And the second one, Mr. Harris?

6 MR. HARRIS: Second one is a letter dated April --
7 oh, no. Wrong one -- dated June 10 to Mr. Cherian Eapen at
8 Park and Planning, also from Montgomery County DOT.

9 MS. ROBESON: And, Mr. Brown, do you have any
10 objections to that?

11 MR. BROWN: No objection.

12 MS. ROBESON: All right.

13 (Exhibit No. 169 was marked for
14 identification and received into
15 evidence.)

16 BY MR. HARRIS:

17 Q And, Mr. Wells, would you summarize for us what
18 those two letters reveal?

19 A Yes. The April 22nd letter provided several
20 comments regarding the Chelsea School zoning plan and
21 several comments regarding typographic details, dedications
22 for improvements, slope and drainage easements, storm drain
23 and flood plane studies and so forth. I won't read the
24 entire letter into the record but the bottom line is really
25 the top line which in the first paragraph where the

1 Department of Transportation says they do not object to the
2 proposed re-zoning.

3 MS. ROBESON: Okay.

4 BY MR. HARRIS:

5 Q And the other letter, the June 10 letter, what
6 does that conclude?

7 A There were a couple of comments regarding the
8 LATR. They made a couple of comments regarding the lane use
9 at one of the intersections. They accepted the applicant's
10 PAMR proposal and they asked for additional detail for the
11 pedestrian and bicycle impact statement at the time of
12 subdivision. The preliminary plan stage, excuse me.

13 Q Okay. In your professional opinion, does the site
14 have, is the vehicular access safe, adequate and efficient?

15 A Yes.

16 Q And is it served by adequate public roads and
17 transit facilities?

18 A Yes.

19 MR. HARRIS: We have no further questions.

20 MS. ROBESON: All right. Mr. Brown?

21 CROSS-EXAMINATION BY COUNSEL FOR OPPOSITION

22 BY MR. BROWN:

23 Q Mr. Wells, let's start with the fact that you
24 submitted two reports. You're relying today on the later
25 report, not the earlier report, right?

1 A Yes.

2 Q The earlier report had a number of errors in it,
3 didn't it?

4 A I don't believe so.

5 Q The November report was prepared about six months
6 after you collected the data that was used in the report,
7 right?

8 A The November report was based on traffic counts
9 that were conducted May 25th, 2010.

10 Q So shall we say five months?

11 A Well, it would be the difference between May 25th
12 and November 4th.

13 MR. HARRIS: If I may interject, Madam Examiner,
14 you mentioned earlier that you didn't see the second report.

15 MS. ROBESON: Yes. I was just looking for it.

16 MR. HARRIS: I looked in and while Mr. Brown is
17 questioning here, I looked in the exhibit list and I don't
18 see it either. I do have, I thought it was in there
19 already, but I do have a copy of it --

20 MS. ROBESON: Okay. Let's --

21 MR. HARRIS: -- of it here.

22 MS. ROBESON: Thank you for looking. Let's put
23 that in as Exhibit 170. And this -- do you have an
24 objection, Mr. Brown?

25 MR. BROWN: No. No objection.

1 MS. ROBESON: And this is 3/18 traffic report,
2 3/18/11 traffic report.

3 (Exhibit No. 170 was marked for
4 identification and received into
5 evidence.)

6 BY MR. BROWN:

7 Q Mr. Wells, as I understand your testimony about
8 the comparison to the Chelsea School operation, you looked
9 at two scenarios, one with the existing enrollment and one
10 with the maximum enrollment, correct?

11 A Correct.

12 Q Did you look at a scenario where you compared
13 actual operation to, from the point of view of
14 transportation with the required operation from the point of
15 view of transportation?

16 A Would you amplify your question, please?

17 Q Sure. Are you aware that the traffic plan that
18 was part of the conditions of the special exception required
19 all buses' access and bus parking to be at the Ellsworth
20 side, Drive side of the site?

21 A No. Our work is based on what we actually
22 observed, not based on any conditions of the special
23 exception.

24 Q Did you observe a 200 student enrollment?

25 A No, sir.

1 Q That was a condition of the special exception.

2 A That's correct.

3 Q So you decided to highlight one condition of the
4 special exception for demonstrative purposes while ignoring
5 the other conditions of the special exception.

6 A We observed the actual traffic operations from 86
7 students. We're aware that up to 200 students were
8 permitted by the special exception so we extrapolated the
9 number of trips that likely would be generated at full
10 enrollment based, versus the then current 86 student
11 enrollment.

12 Q But you did not look at what the situation would
13 be like if the school were operating in compliance with the
14 traffic plan approved with the special exception, did you?

15 A We did not go back to the special exception and
16 read all of the conditions. We did not do that.

17 Q Right. Now, you said that your analysis of peak
18 traffic flow in the morning and the evening was based upon a
19 countywide rate that takes into account actual counts of
20 traffic at townhouses in the County.

21 A Correct.

22 Q And these were metrics that were developed when?

23 A In the 1990s.

24 Q And as I understand it, what we have here is
25 pretty much a linear relationship. The more townhouses, the

1 larger the number?

2 A That's what, that's the Park and Planning model,
3 that's correct.

4 Q Yes. So if we had say half as many townhouses,
5 we'd have something like half as big a number on the trip
6 generation.

7 A According to Park and Planning's method of
8 calculating trips, that would be correct, or if we had twice
9 as many townhouses, we'd have twice as many trips.

10 Q Got it. Got it. One question about this
11 particular picture, Mr. Wells. In the course of your making
12 traffic observations for this area, did you observe queuing
13 along Cedar Street of cars trying to get onto Colesville
14 Road?

15 A The field work was done by Mr. Chris Cabott and
16 our field personnel. I did not personally observe it.

17 Q Do you know if he observed it?

18 A I know there are queues that form and dissipate as
19 the signals go through the cycle from green to yellow and
20 red and back to green again.

21 Q Along Cedar?

22 A At, certainly at the intersection of Cedar and
23 Colesville.

24 Q And does that problem back up along, beyond
25 Ellsworth?

1 A I'd have to refer back to our field information.
2 That was not, to amplify, that was not identified as a
3 critical problem either by Park and Planning staff or
4 Montgomery County Department of Transportation.

5 MS. ROBESON: Although I do think, I understand
6 that but I do think queuing goes to compatibility so --

7 BY MR. BROWN:

8 Q Mr. Wells, with regard to the possibility for a
9 left turn out of the project onto Pershing, do you think
10 that that would generate a lot of traffic that would go
11 through the R-60 community to the north and, to the north
12 and west?

13 A I think in general, the number of trips that would
14 be generated by this project is very modest. It likely
15 would generate some trips to the north. I think we have
16 about five percent traveling in that direction. Whether
17 it's five percent, 10 percent, 15 or 20 percent, they would
18 be low numbers and would have modest, indeed insignificant,
19 impact on the community.

20 MS. ROBESON: Is that based on Park and Planning's
21 distribution?

22 THE WITNESS: Correct.

23 BY MR. BROWN:

24 Q Now, with regard to entering Chelsea Court either
25 from Ellsworth Drive on the west side or from Pershing on

1 the east coming from, I don't know what the name of this
2 street is here, coming up this street.

3 A Springvale.

4 Q Springvale. Do you have a sense, from your work,
5 as to the proportion of entrance coming this way versus
6 those coming from this way?

7 A We think that more traffic would use Ellsworth
8 than would use Pershing. I believe our assignments are
9 about 85/15.

10 MR. BROWN: That's all I have. Thank you, Mr.
11 Wells.

12 MS. ROBESON: All right. Anyone else? All right.

13 MS. VOLK: Actually, I, can I cross, please?

14 MS. ROBESON: Yes.

15 MS. VOLK: Song Volk, 8504 Springvale Road.

16 UNIDENTIFIED VOICE: I cannot hear you.

17 MS. VOLK: Song Volk, 85 --

18 MS. ROBESON: No. Can you move that mic closer to
19 you and then speak up?

20 MS. VOLK: Thank you. Song Volk, 8504 Springvale
21 Road.

22 CROSS-EXAMINATION BY MS. VOLK

23 BY MS. VOLK:

24 Q You're going to have to forgive me. I'm not a
25 traffic expert but I'm going to try to do my best. You

1 stated before that the model that you utilized with the
2 data, that was from Montgomery County, right, and not from a
3 national average?

4 A Model meaning the trip generation estimates?

5 Q The trip generation metric, the T equals, I'm
6 sorry. T equals trips times equals -- for example, 0.48 X
7 U, which is the number of units.

8 A That sounds familiar.

9 Q Okay. So the 0.48 for the a.m., that is something
10 that's, I just want to make sure I understand this myself,
11 that is something that is used for townhouses in Montgomery
12 County?

13 A That's a countywide rate, not --

14 Q It's a countywide rate.

15 A Not a Silver Spring CBD rate which --

16 Q Not a Silver Spring CBD rate and certainly not a
17 national rate, correct?

18 A That's correct.

19 Q Okay. Because the national rate would be
20 something, let's say, that's provided from the "Trip
21 Generation, 8th Edition", correct?

22 A That would be the latest edition. You're doing
23 just fine as a traffic engineer.

24 Q Thank you very much. I try to learn as fast as I
25 can. I have a question then because according to the March

1 18th, 2011 traffic report developed by your company, page 21
2 where they actually give out, generate the numbers here for
3 the a.m. and p.m. traffic, now if you can walk me through
4 this, footnote no. 2, it says p.m. peak hour trip generation
5 based on Institute of Transportation Engineers "Trip
6 Generation, 8th Edition".

7 A At one point, we estimated the number of trips
8 that are actually generated by Chelsea School based on trip
9 generation rates and in our subsequent report, we
10 substituted those estimates for --

11 Q Okay. So --

12 A -- actual field observations.

13 Q Okay. So the March 2011, that little footnote
14 right there shouldn't be there, right, because actually,
15 you're using a national data set from a national data
16 traffic edition, correct?

17 A We, we used the existing school, we compared
18 estimated trips --

19 Q Okay.

20 A -- based on, and to use your term, a model --

21 Q Okay. But --

22 A -- versus actual ground counts.

23 Q Okay.

24 A And we found, for example, on page 21, table 1, we
25 would have estimated that the 86 students at Chelsea School

1 would have generated 67 trips in the morning --

2 Q Um-hum.

3 A -- 15 in the afternoon whereas in reality, based
4 on our actual field observations, the school generated 58
5 trips in the morning and 28 in the afternoon.

6 Q Okay. But --

7 A So you can compare the estimate of 67 in the
8 morning with the actual of 58 so that the actual was 9 fewer
9 than the estimate.

10 Q So the reference, but the reference is coming from
11 that Transportation Engineers "Trip Generation, 8th
12 Edition," right, correct?

13 A That, that's right. And --

14 Q Okay. Was that exorcised out of the subsequent
15 report? Was that taken out? I don't have both copies with
16 me so -- okay. So this is --

17 A That --

18 Q I'm seeing here the --

19 A That's the --

20 Q -- newest copy and it says --

21 A That's the latest.

22 Q -- footnote no. 2, p.m. peak hour trip generation
23 based on Institute of Transportation Engineers "Trip
24 Generation, 8th Edition," so --

25 A That's correct.

1 Q -- that wasn't taken out.

2 A No. That's in our most recent edition of the
3 report.

4 Q Okay. So you're referencing a national data --

5 A Because --

6 Q I'm sorry. I'm not a traffic expert but you're
7 using like a national, you're referencing a national data
8 source.

9 A Yes. And the reason we did that is because Park
10 and Planning, in their model for independent schools, they
11 report an a.m. peak hour trip generation rate but not a p.m.
12 peak hour.

13 Q Not a p.m.

14 A Correct.

15 Q Okay. They just gave you incomplete information
16 so you had to kind of plug in information from someplace
17 else.

18 A Well, the reason for that is that in general,
19 independent school peak hours in the morning coincide more
20 or less with the street peak hour because the first bell is
21 typically 8:00, 8:30 and most people are at work 8:00, 8:30,
22 9:00. But independent schools, like public schools, are
23 dismissed in mid-afternoon before the commuter peak hour.
24 People who work in offices generally leave at 5, 6 in the
25 afternoon as compared to schools which are typically 2:30,

1 3, 3:30, in that, in that area.

2 MS. ROBESON: Are the actual number of trips here,
3 do you count it per pupil or do you count a bus being one
4 trip?

5 THE WITNESS: In this -- these are vehicle trips
6 so --

7 MS. ROBESON: These are --

8 THE WITNESS: -- a bus would be one trip.

9 MS. ROBESON: Okay.

10 THE WITNESS: These are not person trips.

11 BY MS. VOLK:

12 Q Does this calculation also, in terms of trips
13 generated, does that include not only the vehicle trips but,
14 let's say, biking or walking as well?

15 A No, ma'am.

16 Q Okay. Now, going back to this equation, $T = 0.48$
17 $X U$ for the a.m., so the 0.48, you're saying that, you're
18 saying that that comes from Montgomery County and that's for
19 any trips generated by any kind of townhouse, correct?

20 A Correct.

21 Q Okay. So a townhouse that, you know, let's say is
22 priced at \$150,000 versus a luxury townhouse that's priced
23 \$600,000 to \$800,000, they would generate the same number of
24 trips each unit, correct?

25 A Park and Planning does not use, as an independent

1 variable, sales price or household income or auto ownership.

2 It's based on --

3 MS. ROBESON: What about one or two-car garages?

4 A townhouse is a townhouse is a townhouse.

5 THE WITNESS: Right.

6 BY MS. VOLK:

7 Q So this is a -- okay. That's interesting. It's a
8 very simple math equation. Even I can kind of understand it
9 at this point now. So it doesn't take any other variables
10 or any other nuances or complexities of general reality or
11 life, correct? It's a very straight formula. The number of
12 trips equals the 0.48 times the number of units, correct?

13 A That's correct. And the rates we used were the
14 countywide rates. It doesn't take into account, for
15 example, the transit orientation of this site, by geography,
16 the fact that this is on the north side of Cedar Lane and
17 not the south side of Cedar Lane. We're using countywide
18 rates, rates that would apply in Germantown or Olney or any
19 other place in non-CBD areas of Montgomery County.

20 Q I'm sympathetic to --

21 A If we used the CBD rates, it would be a lower
22 number of trips.

23 Q I'm sympathetic to the fact that you're kind of
24 limited by those kinds of rates and formulas, I really am,
25 but it's just -- I want to make sure I understand. It does

1 not look, from that formula, like a trip generation is
2 based, for example, on income, correct?

3 A Only to the extent that it doesn't distinguish
4 amongst a high-end home or higher incomes in Montgomery
5 County.

6 Q And it's not certainly based on car ownership,
7 correct?

8 A That's correct.

9 Q And it's certainly not based on trips taken using
10 different transportation modes like transit, bike, walking,
11 vehicles. It just talks about vehicles, correct?

12 A That's correct. As, as the ITE database, so with
13 Park and Planning rates. I would say if we used the CBD
14 rates, Silver Spring CBD rates, that would be an indirect
15 method of taking into account a higher transit propensity,
16 the more urban lifestyle as opposed to suburban lifestyle.
17 And EYA, as you may know, as others may have testified, is a
18 company that is built around urban living, transit oriented
19 living, and that's what they expect to happen here.

20 Q But that's not taken into, that's not taken into
21 account by this formula you're using, correct?

22 A That's right.

23 Q Okay.

24 A We're using the countywide rates as opposed to the
25 lower more transit oriented CBD rates.

1 Q Okay. And once again, I really am sympathetic by
2 the limitations of this formula but in a perfect world, if
3 we were living in a perfect world, in order to have the most
4 accurate data for a particular neighborhood or sector, isn't
5 it, you know, nice or ideal to have a formula and numbers
6 that are specific to that particular neighborhood and
7 sector? In a perfect world.

8 A Well, the Silver Spring CBD rates are specific to
9 the CBD.

10 Q Which include the CBD.

11 A That's the CBD, correct.

12 Q Include the CBD. But the area that you're talking
13 about is not in the CBD. The area you're talking about is
14 outside of the CBD.

15 A It's across the street from the CBD and that's why
16 we used the countywide rates.

17 Q Even though, for example, a master plan talks
18 really a lot about making sure to reduce through-cut traffic
19 in residential areas next to CBDs and try to reduce the
20 interior being inundated by traffic from a CBD.

21 MR. HARRIS: Is that a question?

22 THE WITNESS: Do you have a question?

23 BY MS. VOLK:

24 Q Well, I was wondering -- pardon me. I'm not a
25 litigator, but I'm just wondering, you know, you take into

1 account data set from a CBD even though we're talking about
2 an area that is not the CBD, correct? Yes or no on that
3 one.

4 A This is not the CBD and --

5 Q Great. Thank you.

6 A And we used the non-CBD trip generation rates.

7 Q Okay. And are you -- okay. Fine. Wouldn't it be
8 more -- well, once again, in a perfect world, if you're
9 looking at potentially other variables that can be reviewed
10 to determine trip generation such as car ownership, having
11 two cars versus one, and income, wouldn't it be reasonable,
12 as an expert, to believe that households with like, for
13 example, more number of cars might generate more trips than
14 households with one or no car.

15 A What we have found, what the data suggests is that
16 many people in transit-oriented areas, CBDs, might own a car
17 but they've chosen to live there because of the convenience
18 and the utility of the transit services so --

19 Q But that's not the question I asked.

20 A Excuse me. Let -- I didn't interrupt your
21 question so don't interrupt my answer.

22 MS. ROBESON: Let him finish because I think he is
23 responsive to your question.

24 MS. VOLK: Okay. Okay.

25 THE WITNESS: So a household may need a car or

1 even two cars for evenings and weekend but they may choose
2 not to use that car during the week, particularly during the
3 commuting peak hours, because they might walk to work, they
4 might take the bus to work, they might take the Metro or
5 MARC to work.

6 MS. ROBESON: Okay.

7 THE WITNESS: So it's not a direct of one-to-one
8 relationship between auto ownership and actual peak hour
9 vehicle trip generation.

10 BY MS. VOLK:

11 Q The question I asked is wouldn't it be reasonable
12 to believe that households who would have more cars might
13 generate more trips than households with one or no cars.

14 A I just think I described the reason why that might
15 not necessarily be true.

16 Q So you don't necessarily believe it to be true.

17 A That's correct.

18 Q Okay. Because you're assuming that everybody that
19 lives over there, a lot of them are going to take the Metro
20 to work.

21 MS. ROBESON: Over where?

22 BY MS. VOLK:

23 Q Over, sorry, at the Chelsea School Court site,
24 that they're going to walk to the Metro or walk to work.

25 A We assumed that by virtue of the fact that we used

1 the countywide rates, that they would behave as a
2 suburbanite would behave in terms of their travel behavior.

3 Q So you're using a formula that takes into account
4 only three variables and you're extrapolating from that
5 formula the assumption that people in that Chelsea Court
6 School place might not use all of the vehicles that they
7 might have, for example, if they have two cars or one car,
8 no car, because they're going to use the Metro or walk to
9 work somewhere in Silver Spring?

10 A A common misperception in zoning cases like this,
11 and we have run into this in many different cases, is to
12 look at the number of units, the number of parking spaces
13 provided for each unit. For example, if there's a two-car
14 garage associated with each unit. It's a simple calculation
15 and simple error to say that if I, if every unit has two
16 cars, two parking spaces, then every unit will generate that
17 many peak hour trips.

18 So if you have, just to pick a number out of the
19 air, 150 parking spaces, won't this development generate 150
20 a.m. peak hour trips and 150 p.m. peak hour trips, and the
21 empirical answer to that is emphatically no, because not
22 everybody chooses to, to drive to work every day, not
23 everybody goes to work at the same time every day. Some
24 people are on vacation, some people work at home, some
25 people walk to work, some people take the bus to work, some

1 people take the train to work, some people work flexible
2 work hours and so forth.

3 So as a practical matter, to get at that question
4 of how many trips will a townhouse generate, one goes to a
5 townhouse development and actually measures out the driveway
6 how many trips that generated, then calculate trip
7 generation rates, and that's exactly how the trip generation
8 rates were derived in the LATR guidelines.

9 Q Okay. So okay.

10 A That's probably more information than you want
11 but --

12 Q Oh, no. It's good information. So using a
13 limited, you know, with a formula that uses three variables,
14 I guess my next question is wouldn't it be reasonable to
15 believe that quote, unquote, "wealthier households" such as
16 households who can actually afford a 68, \$100,000 luxury
17 townhouse might generate more trips than a quote, unquote,
18 "poor household"?

19 MR. HARRIS: Objection. I think that's the third
20 time that same question's been answered --

21 MS. VOLK: No. I asked a different question.

22 MR. HARRIS: -- or asked, and it's been answered.

23 MS. ROBESON: Yes. Okay. I didn't see the
24 difference in your question. What is the difference in
25 your --

1 MS. VOLK: Let me clarify.

2 BY MS. VOLK:

3 Q Isn't it reasonable to believe, for example, that
4 people who live in, let's say, these luxury townhouses, they
5 might, you know, take trips for soccer practice, music
6 lessons, shopping trips and other types of trips that a
7 person that has more limited means might not be able to
8 take?

9 A Well, these wealthy people may be at their
10 condominium down in Hilton Head or, you know, you --

11 Q But we're not talking about the condominiums in
12 Hilton Head. I guess I'm trying to talk about that specific
13 property.

14 MS. ROBESON: Well, okay. I don't understand the
15 relevance of --

16 MS. VOLK: I guess what I'm trying to --

17 MS. ROBESON: -- the question.

18 MS. VOLK: -- put forth is that there are a lot of
19 different variables which are not taken into account by this
20 formula that actually might effectuate the number of trips
21 generated.

22 MS. ROBESON: Okay. Then I think he has responded
23 to some of the situations you've raised. The fact is,
24 however, that this is for, whether it's a perfect formula or
25 not, I can think of many, many scenarios in which it is not

1 the perfect formula, it is the perfect, or it is the
2 mandated formula for Local Area Transportation Review and
3 Policy Area Transportation Review. Now, I do think that
4 traffic, as far as traffic flow or parking, does relate to
5 compatibility but we could, I mean, certainly, there are
6 holes in the Local Area Transportation Review that you could
7 drive a truck through so to speak. One peak hour truck
8 trip. But, you know, that is the standard so if you have
9 questions regarding whether he performed his analysis using
10 the correct standards, but to attack the LATR and the PAMR,
11 they are the required tests.

12 MS. VOLK: Understood. I can just shift away and
13 ask another set of questions then.

14 MS. ROBESON: Okay.

15 BY MS. VOLK:

16 Q Once again, I'm not a traffic expert so I'm just
17 trying to figure out what is actually in the report. Are
18 you aware that during the Planning Board hearing, EYA
19 submitted a set of binding elements?

20 A Yes. I was at that hearing.

21 Q And one of the binding elements that was, that
22 there would be no traffic coming in and out of Springvale
23 Road?

24 A I believe that was represented at the hearing.

25 Q And that the Planning Board approved EYA's

1 approved development in part because of the binding
2 elements, including the one where there would be no traffic
3 coming in and out of Springvale Road.

4 A I, my --

5 MR. HARRIS: Objection. I don't think that's in
6 the record.

7 MS. ROBESON: In our record or the Planning
8 Board's record?

9 MR. HARRIS: In either.

10 MS. ROBESON: You can ask him a hypothetical
11 without characterizing the Planning Board's testimony if you
12 wish.

13 BY MS. VOLK:

14 Q Well, let's see here. Was there or was there not
15 a binding element restricting traffic in and out of
16 Springvale Road presented at the Planning Board?

17 A As I recall, the testimony at the Planning Board
18 hearing and my memory may be faulty, but I believe it was
19 representing that, represented that EYA would not construct
20 a driveway directly from this site onto Springvale Road.

21 Q Because constructing that kind of driveway would
22 basically encourage or enable traffic to cut in and out
23 through that road, correct, into that neighborhood? As you
24 see right here with a little arrow coming out towards --
25 let's see. Right there. Sorry. It's the lower, if I could

1 point this out --

2 (Discussion off the record.)

3 MS. ROBESON: I'm sorry, Ms. Volk. I didn't mean
4 to interrupt but I didn't want the --

5 MS. VOLK: Oh, no. Not a problem.

6 MS. ROBESON: -- transcript to be incomplete.

7 MS. VOLK: I think I've already muddled the
8 transcript putting the papers over the microphone and stuff.

9 MS. ROBESON: No, no.

10 MS. VOLK: So.

11 MS. ROBESON: We have wonderful court reporters.

12 BY MS. VOLK:

13 Q Sorry. Let me just remember --

14 MS. ROBESON: Take a moment, back up.

15 BY MS. VOLK:

16 Q -- what I actually asked you in the first place.

17 If there was a road that came out of this Chelsea School
18 Court property and it goes into Springvale, basically, the
19 traffic, please lead me through this, the traffic going up
20 and down that road, people would just go down there, maybe
21 head over to Wayne or go into other areas in the interior,
22 correct?

23 A If a left turn were permitted from the internal
24 road, internal street, Chelsea Court, if left turns were
25 permitted onto Pershing, it would be possible to turn left

1 out and then subsequently, turn right or left onto
2 Springvale or continue north onto Pershing. An alternative
3 to that is not to permit the left turn, to compel residents
4 and visitors to turn right out of there.

5 Q Okay. I have a paper here, document here from the
6 Montgomery County Planning Board.

7 MR. BROWN: Exhibit number.

8 BY MS. VOLK:

9 Q Oh, sorry. Exhibit No. 103 where they discuss the
10 proposed EYA development and on page 2 I believe, sorry, 1,
11 2, yes, page 2, there's a list of elements here 1 to 9. And
12 no. 6 says, I believe this is a set of binding elements
13 here, there shall be no vehicular access to or from
14 Springvale Road. Do you see that?

15 A I do see that.

16 Q The binding elements that EYA presented here to
17 the Hearing Examiner -- I don't have the exhibit. If
18 somebody could reference it, that would be really great --
19 does it have that same binding element in there?

20 MR. HARRIS: If you know.

21 THE WITNESS: I --

22 MS. ROBESON: If you know.

23 THE WITNESS: I don't know the answer to that.

24 BY MS. VOLK:

25 Q If you know.

1 A I don't know the answer to that.

2 Q You don't know the answer to that. Okay. I just
3 wanted to make clear that this particular exhibit has that
4 binding element.

5 MS. ROBESON: Okay. You can ask, this is your
6 time to ask questions.

7 MS. VOLK: Okay. Great.

8 BY MS. VOLK:

9 Q When you see that Springvale Road community right
10 there on the lower side of that Exhibit 167, you see it's
11 bounded by Wayne Avenue which is a, one main road and if
12 there's another road from Chelsea Court that cuts down
13 there, do you anticipate that there would be just increased
14 traffic from the townhouses down that road?

15 A I suspect that some traffic would follow that path
16 just as school traffic today follows that path and when the
17 question was increased traffic, certainly not in the morning
18 because this townhouse project would generate fewer trips
19 than the Chelsea School in fact does today.

20 MS. ROBESON: But in the peak hour.

21 THE WITNESS: During the a.m. peak hour, it
22 generates, this will generate --

23 MS. ROBESON: No, no. I'm saying but in the p.m.
24 peak, oh, I'm sorry, in the p.m. peak hour.

25 THE WITNESS: Right. There would be --

1 MS. ROBESON: Increased traffic.

2 THE WITNESS: -- 30, 36 additional trips I believe
3 the number was.

4 MS. ROBESON: Right. Yes.

5 THE WITNESS: So there would be some small number
6 that would want to use Springvale to get to, to Wayne.

7 MS. ROBESON: To Wayne.

8 BY MS. VOLK:

9 Q To Wayne. Okay, great.

10 A Again, all of these numbers are very modest.

11 Q Okay. Are you aware that the Chelsea School is,
12 you're aware that the Chelsea School is operated under a
13 special exception, and are you aware that they have to
14 comply with a specific traffic plan mitigating the impact of
15 the traffic and parking conditions at the school?

16 A Again, at the risk of repeating an, a response to
17 an earlier question --

18 MS. ROBESON: You can repeat it.

19 MR. HARRIS: Yes.

20 THE WITNESS: We --

21 MS. ROBESON: That wasn't -- this is from her, not
22 from --

23 THE WITNESS: I, I -- we did not follow the
24 special exception for Chelsea School and review or critique
25 the transportation elements of that special exception. We

1 relied on what we actually observed in the field.

2 BY MS. VOLK:

3 Q Are you aware that the Chelsea School operations
4 on that property was conditioned on compliance with that
5 transportation plan?

6 A Again, I --

7 MS. ROBESON: I think he just said that they did
8 not look at the -- is it true that you didn't look at the
9 special exception opinion conditions?

10 THE WITNESS: That's correct. We didn't.

11 MS. ROBESON: Okay.

12 MS. VOLK: Okay.

13 THE WITNESS: Again, we relied on what we saw with
14 our own eyes.

15 MS. ROBESON: They looked at actual conditions.

16 MS. VOLK: Okay.

17 BY MS. VOLK:

18 Q I guess you're not aware that the plan requires
19 that all buses and bus parking is to be at the Ellsworth
20 Drive side of the site?

21 A How many different --

22 MS. ROBESON: He's already --

23 THE WITNESS: -- ways can I say this?

24 MS. VOLK: Okay.

25 MS. ROBESON: He's already said that he didn't

1 look at the special exception conditions.

2 THE WITNESS: I understood from earlier testimony
3 that at least one of the neighbors on Springvale said that
4 buses do align, line up on Springvale and that was okay with
5 him.

6 BY MS. VOLK:

7 Q All right then. Fine. Going back to your March
8 report, you said that there weren't a lot of mistakes in
9 that March report, correct, or any mistakes in that March
10 report?

11 A I'm not familiar with that report.

12 Q You didn't generate that report?

13 A Chris Cabott who would have been here except he's
14 a new father as of Thursday. Baby, mother and father are
15 doing fine. They're coming home from the hospital today.

16 Q Okay. But you, as the I guess Chris' boss, would
17 have been aware of that report and would have been familiar
18 with that report in coming here to testify, correct?

19 A I'm, I'm familiar with the work. Mr. Cabott
20 sealed the report.

21 Q And you're pretty confident there's no mistakes.

22 A This has been reviewed by us, Park and Planning
23 and Montgomery County DOT.

24 Q But then you generated another report, I believe,
25 about six months later, correct?

1 A Correct.

2 Q And in that later report, I looked through it
3 briefly, once again, I'm not a traffic expert but --

4 MS. ROBESON: When you're talking about the later
5 report, are you talking about Exhibit 170 which is the March
6 18th, 2011?

7 MS. VOLK: Which came first? There's a March 18th
8 and then there was a November report.

9 MS. ROBESON: The March came later.

10 MS. VOLK: The March came later.

11 BY MS. VOLK:

12 Q So you generated a November report, correct, and
13 then later on, you generate another report in March? So
14 we're looking at discussing mostly the March report.

15 A Correct.

16 Q Were there any differences between the November
17 and the March report?

18 A Other than the date?

19 Q Yeah. Other than the date.

20 A Yes. It include, it included actual field
21 observations of the Chelsea School trips. That's one of the
22 differences. There was a different site plan. That's the,
23 those are the principal differences as I recall.

24 Q Okay.

25 MS. ROBESON: How, in what way was the site plan

1 different?

2 THE WITNESS: There was a different alignment of
3 the internal street.

4 MS. ROBESON: Private Street A. Was it, but was
5 it generally, I guess that's --

6 THE WITNESS: It had a --

7 MS. ROBESON: -- southeast, northwest.

8 THE WITNESS: It had a driveway on both Ellsworth
9 and Pershing.

10 MS. ROBESON: Okay.

11 BY MS. VOLK:

12 Q In your November traffic study that was submitted
13 as part of the original application, in this case, were
14 there like numerous errors in the figures and tables listed
15 in the appendices?

16 A I'm not familiar with that.

17 MS. VOLK: So I don't know if everybody has the
18 exhibits on hand but if you can look, for example, if there
19 is an exhibit on hand, for example, in Appendix B --

20 MS. ROBESON: Now, which report are you --

21 MS. VOLK: November.

22 MS. ROBESON: The existing peak hour traffic
23 counts?

24 MS. VOLK: Yes. Existing peak hour traffic
25 counts.

1 BY MS. VOLK:

2 Q Do you see that right now?

3 A I do.

4 Q Were there any, let's see here, the directions and
5 heading of the columns on these pages, were they in any way
6 incorrect?

7 A That's a detail I'm not familiar with.

8 Q Did you -- were you aware if any of the traffic
9 count figures were, repeatedly appeared in wrong columns?

10 MS. ROBESON: I think it would be helpful -- he's
11 already testified. If you see specific mistakes, do you
12 want to ask him about those specific mistakes?

13 MS. VOLK: Well --

14 MS. ROBESON: He's already stated that he's not
15 aware of them.

16 MS. VOLK: Okay. Let's see. I can but I also have
17 a list that's developed where we reviewed both of the
18 traffic reports and we generated at least three pages of
19 different mistakes.

20 MS. ROBESON: Well --

21 MS. VOLK: The differences that we saw in the
22 first and the second report.

23 MS. ROBESON: Okay. Well, you have --

24 MS. VOLK: I can provide it as an exhibit if that
25 would be --

1 MS. ROBESON: Well, you also have the opportunity
2 to testify and that is something that you can bring up in
3 your own testimony.

4 MS. VOLK: Okay. Is it --

5 MS. ROBESON: Or you can ask him about specific
6 mistakes, but that's your choice. But it may be more
7 helpful, I mean, rather, he's already said that he doesn't,
8 he's not as familiar with the appendices because he didn't
9 prepare the report.

10 MS. VOLK: Okay. Let's try just one.

11 MS. ROBESON: Okay.

12 MS. VOLK: And just see how that goes.

13 MS. ROBESON: And then you're, you're welcome to
14 bring the mistakes up in your own direct testimony should
15 you wish to testify.

16 MS. VOLK: Okay.

17 BY MS. VOLK:

18 Q So let's see. For example -- let's see here. I
19 believe it's page 6 of the March report.

20 MS. ROBESON: Page -- wait. We're out of
21 appendices?

22 MS. VOLK: We're out of the appendices.

23 MS. ROBESON: And we're on page 6. Okay.

24 MS. VOLK: Page 6 of the March report.

25 MS. ROBESON: All right.

1 BY MS. VOLK:

2 Q It seems here that of -- the March report claims
3 access to the school from Georgia Avenue but it seems like
4 that wasn't in the November report.

5 MS. ROBESON: Can you tell us what paragraph
6 you're directing him to?

7 MS. VOLK: Actually, I am going to bring this up
8 later on.

9 MS. ROBESON: Okay.

10 MS. VOLK: So because I think you probably are
11 tired of me at this point in time so --

12 MS. ROBESON: No. I'm not tired. This is your
13 chance to ask questions so you need to ask your questions.

14 MS. VOLK: At this point, I --

15 MS. ROBESON: I just like to stay abreast of where
16 you are. That's why --

17 MS. VOLK: Okay.

18 MS. ROBESON: -- I was asking. It's up to you.
19 You can do either one.

20 BY MS. VOLK:

21 Q How about let's go to, let's try this one more
22 time, let's go to page 19 of the March report. Oh, sorry.
23 Sorry about that. In the March study, they give the numbers
24 here of 37 a.m. peak trips and 64 p.m. peak hour trips that
25 the school, let's see here, that the school, the existing

1 school -- sorry. I have to rephrase.

2 The existing school generates 58 trips during the
3 a.m. commuter peak hour and 28 trips during the commuter
4 peak, p.m. peak hour based on counts conducted by Wells &
5 Associates. And according to this, it's the claim of what
6 the school currently generates. It goes down on the a.m.
7 trip or p.m. based on, it's based on actual counts and not
8 on assumptions, but are they really consistent because on
9 table 1 on page 21 --

10 MS. ROBESON: Okay. Which report are you in?

11 MS. VOLK: The March report.

12 MS. ROBESON: Okay.

13 BY MS. VOLK:

14 Q It seems like it's based on driveway counts, is
15 that correct?

16 A Both driveway counts and parents dropping off and
17 picking up students at the curb.

18 Q So it counts for both of those?

19 A Correct.

20 Q And you're basing, I remember you're talking,
21 you're basing things on a school generation with 200
22 students, the max allowed under the special exception,
23 correct?

24 A The counts we used in the PAMR calculations are
25 actual observations. As a point of information, we also

1 compare what we would estimate 200 students would generate
2 based on the observed school trip generation rates. We
3 compared that with what Chelsea Court would generate.

4 Q But there are not actual 200 students at that
5 school, correct?

6 A That, that's correct.

7 Q Okay.

8 A The current enrollment, as we understand it, is 86
9 students.

10 MS. VOLK: Actually, I have no further questions.
11 Thank you very much.

12 MS. ROBESON: All right. Well, I look forward to
13 seeing you again. Mr. Harris, redirect?

14 MR. HARRIS: A few redirect.

15 REDIRECT EXAMINATION

16 BY MR. HARRIS:

17 Q A lot of discussion about townhouse trip
18 generation rates and Montgomery County rates. Are the ITE
19 townhouse rates higher or lower than the trip generation
20 rate that Montgomery County uses?

21 A The ITE rates are lower.

22 Q Which study then would be a more conservative or a
23 more worst case scenario if you will as far as the trip
24 generation from this, using Montgomery County's rates or
25 using ITE's?

1 A Montgomery County rates would be more conservative
2 in that the Montgomery County or Park and Planning
3 Commission rates would yield higher estimates of number of
4 townhouse trips compared to ITE.

5 Q Do the ITE rates give you any comfort as to the
6 veracity, the reliability of the Montgomery County rates?

7 A It seems sensible to me that Montgomery County
8 rates would be higher than the national rates due to
9 relative wealth and prosperity of Montgomery County compared
10 to the rest of the nation.

11 Q So do you believe the Montgomery County rates to
12 be a justifiable use here?

13 A Well, certainly they are because they're based on
14 actual observations here in Montgomery County, not
15 elsewhere.

16 Q You were shown Exhibit 103, the letter from Park
17 and Planning, and asked about the condition no. 6, that they
18 were recommending there shall be no vehicle access to or
19 from Springvale Road. Would you read for us the last line
20 of the sentence on the first page, the last sentence on the
21 first page? I beg your pardon.

22 A Again, reading from Exhibit No. 103, the last
23 sentence on the first page is as follows. "The Board
24 acknowledges that modifications to the below binding
25 elements may be justified in light of new information

1 presented during the Hearing Examiner's evidentiary
2 hearing."

3 Q So does that suggest to you a possibility that
4 that could be changed if we wanted to or had to change that
5 binding element?

6 A It would suggest to me exactly what it says, that
7 elements might change.

8 Q And if you would go to your traffic report and
9 look at the trips that you are sending out Pershing on that
10 because of the trip distribution that Park and Planning
11 requires, could you tell us, if that driveway were moved to
12 Springvale, what the impact would be on the number of trips
13 on Springvale?

14 A If there were a driveway on Springvale, a direct
15 driveway connecting Chelsea Court with Springvale, it would
16 add more trips to Springvale than the current plan.

17 Q What would the number be? Well, can you look at
18 the -- tell us what the number of trips going northbound on
19 Pershing is in your study.

20 A It's about, it's about five percent of the trips.

21 Q And of that five percent, how many do you have
22 going left up Springvale?

23 A A negligible number.

24 Q So would it be safe to say that if the driveway
25 were on Springvale, there would be a negligible number going

1 further west on Springvale under that scenario?

2 A If one could turn left directly out of the site
3 onto Springvale, that would bring Ellsworth Drive into play
4 as a possible exit route, whereas that's not possible as an
5 exit route now because of the one-way southbound link just
6 south of Springvale.

7 Q Would you pull out the traffic report and go to
8 the intersection there at the site driveway and Pershing?

9 MS. ROBESON: Is this the March 2011 report?

10 MR. HARRIS: Yes.

11 MS. ROBESON: And what page is that? Figure 2?

12 THE WITNESS: Figure 11.

13 MS. ROBESON: Okay.

14 BY MR. HARRIS:

15 Q Look at intersection no. 4.

16 A We have --

17 Q How many trips do you have going left on
18 Springvale from northbound Pershing?

19 A None actually.

20 Q None.

21 A Yeah.

22 Q So --

23 A Excuse me. None. That's correct.

24 Q Okay. So --

25 A But I would acknowledge that's a possibility.

1 Q And so if intersection no. 10 were eliminated and
2 instead, that traffic went out on Springvale, would the
3 number of trips on Springvale be approximately the same
4 going in that direction as they are under this scenario?

5 A It would be higher.

6 Q Would it be a measurable number, estimated?

7 A More or less five trips, peak hour trips.

8 Q Five peak hour trips. Now, if we were to, if this
9 site were to be constructed with townhouses fronting on
10 Springvale Road under the existing zoning, and let's, if
11 there were 15 townhouses along that frontage, how many peak
12 hour trips would that put onto Springvale Road?

13 A Well, all of the trips generated by those
14 townhouses that have driveways on Springvale, assuming they
15 had no other driveways, all of that traffic would be on
16 Springvale. So at 0.48 trips per townhouse in the morning
17 peak hour, that means for every two townhouses, there would
18 be one trip, so it depends on how many driveways there are.

19 Q So if there were 15 there, would that be a higher
20 number or a lower number than the 5 you just estimated for
21 this plan?

22 A A higher number.

23 Q And would it be higher or lower than the zero you
24 estimated for this plan if we're able to keep the Pershing
25 driveway?

1 A Yes. It would be higher.

2 Q And would the same be true if there were single-
3 family homes built along there?

4 A Again, if there were driveways to individual homes
5 on Springvale, all of that traffic would come in and out of
6 those homes onto Springvale which would be higher than what
7 we're estimating.

8 Q And would that be irrespective of the direction in
9 which those trips are destined?

10 A They might turn left, they might turn right in or
11 out of the driveways, but they would be on Springvale.

12 Q Whereas right now, some of the traffic exiting
13 this site doesn't even go towards Springvale because it
14 chooses a different direction.

15 A Correct.

16 Q And is the trip generation rate for single-family
17 detached units higher or lower than townhouses?

18 A It is higher.

19 Q By how much?

20 A The -- again, referring to the Park and Planning
21 LATR trip generation rates, a single-family home would
22 generate .95 trips per unit. Basically, one per unit --

23 Q So --

24 A -- as opposed to a townhouse which would generate
25 .48 trips per unit, or half a trip per unit.

1 Q So if there were eight single-family detached
2 units along there, that would generate approximately seven
3 or eight peak hour trips.

4 A Correct.

5 Q And would that be more or fewer trips than the
6 number of trips that you estimated would be generated on
7 Springvale with this plan as developed this way?

8 A It would be more trips.

9 Q And would it be more or fewer than if Private Road
10 A, under this plan, went out to Springvale rather than to
11 Pershing?

12 A I would --

13 Q You estimated that at five.

14 A Right.

15 Q So would nine be greater, or eight be greater than
16 five?

17 A I think I can agree on that.

18 Q Okay. Thank you. Would you estimate nine peak
19 hour trips or eight peak hour trips on Springvale to be a
20 significant impact on Springvale Road?

21 A That's a modest number. I would not consider it a
22 high impact.

23 Q Are there occasions when you submit a traffic
24 report in a case and either Park and Planning or the
25 Department of Transportation recommends revisions to those

1 reports?

2 A Yes.

3 Q And is that what happened here?

4 A DOT did suggest a revision to a lane use in one
5 instance.

6 Q And Exhibit 169, can you tell us from that letter
7 whether DOT has accepted the March traffic report as
8 correct?

9 A They do. They recommend approval of the studies
10 subject to some minor comments.

11 Q If it turns out that there were any arithmetic
12 errors in the tables in Exhibit B to your report and
13 reflecting on the total trip generation from this project,
14 do you believe it would alter your conclusions as to the
15 adequacy of traffic capacity for this project?

16 A It almost certainly would not.

17 Q Thank you.

18 MR. HARRIS: I have no further questions.

19 MS. ROBESON: Okay. Any recross based solely on
20 Mr. Harris, Mr. Harris' questions?

21 MR. BROWN: Yes.

22 RE-CROSS-EXAMINATION BY COUNSEL FOR OPPOSITION

23 BY MR. BROWN:

24 Q Mr. Wells, would you take a quick look at Exhibit
25 115?

1 MR. BROWN: Could you provide him with that?

2 MR. HARRIS: Oh.

3 MS. ROBESON: Which --

4 MR. HARRIS: What is that one? Oh, I don't have
5 it handy here.

6 MR. BROWN: Take that one.

7 BY MR. BROWN:

8 Q Would you compare that with the Planning Board's
9 list of nine binding elements on page 2 of Exhibit 103, Mr.
10 Wells?

11 MR. HARRIS: Do you have that? Yes, you do.
12 Okay.

13 THE WITNESS: I have them both in front of me.

14 BY MR. BROWN:

15 Q I'd like to know if you know why Planning Board
16 item no. 6 is eliminated from Exhibit 115 which is the
17 applicant's suggested binding elements.

18 A I, I don't know the background behind that.

19 Q You weren't consulted about that elimination?

20 A Not that I recall.

21 Q What does binding element no. 6, as the Planning
22 Board wrote it, what do you understand it to prohibit?

23 A Binding element no. 6, according to the Planning
24 Board reads as follows. "There shall be no vehicular access
25 to or from Springvale Road," and I interpreted that to mean

1 no driveway on Springvale Road.

2 Q Well, let me ask the question this way. Would
3 binding element no. 6 prohibit you from coming out of the
4 project on Pershing Drive and turning onto Springvale Road
5 to the east?

6 A I was at the Planning Board hearing and that's not
7 the, that's not what I came away with.

8 Q And likewise, it would not prohibit you from
9 coming in Springvale Road, turning left and into the project
10 from Pershing Drive.

11 A That's my understanding. It would not.

12 Q It would only prohibit a driveway along Springvale
13 Road.

14 A Again, this is probably a matter one ought to take
15 up with the Planning Board but my understanding is it would
16 prohibit the driveway on Springvale Road.

17 MS. ROBESON: You mean between Pershing and
18 Ellsworth.

19 THE WITNESS: That's correct.

20 MR. BROWN: Thank you for that clarification.

21 THE WITNESS: That's correct.

22 MR. BROWN: I have nothing --

23 THE WITNESS: Along the site frontage.

24 MR. BROWN: I have nothing further.

25 MR. HARRIS: No further questions.

1 MS. ROBESON: Mr. Harris, right now, the applicant
2 is not proposing to include that recommended binding element
3 in --

4 MR. HARRIS: That is correct.

5 MS. ROBESON: Okay. And I guess Mr. Youngentob
6 would have to address that because you just cross-examined,
7 or you just examined him on the fact that there would be
8 less traffic on Springvale if there was no access, correct?

9 MR. HARRIS: Correct.

10 MS. ROBESON: Okay.

11 MR. HARRIS: Zero versus five I think his comment
12 was.

13 MS. ROBESON: And you -- oh, so you're saying --
14 but Mr. Wells' testimony, as far as circulation on local
15 streets, is based on just Private Drive A and that
16 alignment, correct?

17 MR. HARRIS: Well, I think it's about 99 percent
18 the same if that private drive were on Springvale.

19 MS. ROBESON: Well, I hate to do this --

20 MR. HARRIS: Okay.

21 MS. ROBESON: -- but I've got to ask you, Mr.
22 Wells, is it 99 percent the same?

23 THE WITNESS: Well, if there --

24 MS. ROBESON: Because there was some --

25 THE WITNESS: -- was no driveway on Pershing and

1 there was --

2 MS. ROBESON: There was --

3 THE WITNESS: -- a driveway on Springvale,
4 Springvale would get use and all of the --

5 MS. ROBESON: Well, it's not just the use. It's
6 whether it allows a cut-through through the neighborhood.
7 That's the question to me, five, you know, zero or five.
8 But the question is I thought that you, and this was my
9 error, I thought you were going to include that as a binding
10 element, but the question is what happens to the
11 neighborhood if there is access along Springvale?

12 THE WITNESS: Well, at the risk of talking
13 philosophy, if, in the wisdom of the County, this were to be
14 approved and to be built, this townhouse community would be
15 part of the community so at what point do you cease to be an
16 outsider and you become an insider?

17 MS. ROBESON: Well, I, but that's not, that's not
18 what I'm asking. What I'm asking is cut-through traffic.
19 If you had a private drive running roughly north-south
20 instead of roughly east-west, what would be the result?

21 THE WITNESS: You would have more so-called cut-
22 through traffic.

23 MR. HARRIS: Let him walk through that exhibit
24 maybe.

25 THE WITNESS: A direct, you know, a solution to

1 everyone's concern about traffic turning left out of Chelsea
2 Court onto Pershing and either then turning right or left
3 onto Springvale or continuing north on Pershing, again, if
4 you consider residents of Chelsea Court to be Auslanders,
5 you could characterize that as cut-through traffic. The
6 solution to that, if you don't want the auslanders cutting
7 through the existing neighborhood, is to limit them to a
8 right turn only. This, this driveway could be a right turn
9 in, a right turn out only and --

10 MS. ROBESON: But that's the driveway -- are you
11 talking about potentially another access, two accesses, one
12 east-west and one north-south?

13 THE WITNESS: No. I think the question I was
14 asked is if one did not have this connection, this meaning a
15 connection of what is this called, Street A, Street A with
16 Pershing and instead, had a connection of Street A with
17 Springvale, would, would the latter be more or less, add
18 more or less traffic to Springvale than what is currently
19 proposed. And the obvious answer to that is a driveway on
20 Springvale Road would add more traffic to Springvale than
21 what is currently proposed.

22 MS. ROBESON: But is your position that as far as
23 cut-through traffic, for instance, between -- what about
24 cut-through traffic between the Beltway to get to downtown
25 Silver Spring?

1 THE WITNESS: Well, that's thwarted under the
2 current --

3 MS. ROBESON: And how is that thwarted?

4 THE WITNESS: If you --

5 MS. ROBESON: The existing conditions?

6 THE WITNESS: The existing turn, one-way streets
7 and do not enters and turn prohibitions essentially thwart
8 that through traffic.

9 MS. ROBESON: So what you're essentially saying is
10 that the Planning Board's placement, or the binding elements
11 suggested by the Planning Board was solely to protect the
12 volume of traffic on Springvale Road?

13 THE WITNESS: Again --

14 MS. ROBESON: Well, your character --

15 THE WITNESS: -- the Planning Board could be --

16 MS. ROBESON: Your characterization.

17 THE WITNESS: The Planning Board could be queried
18 directly but I believe the intent was not to have a driveway
19 onto Springvale in order to limit or even eliminate Chelsea
20 Court traffic using the link or the block of Springvale
21 between Pershing and Ellsworth.

22 MS. ROBESON: Okay. I --

23 THE WITNESS: By the way, the school currently has
24 a driveway onto Springvale. There's a parking lot, a school
25 parking lot that --

1 MS. ROBESON: Right. I know.

2 THE WITNESS: -- is accessed from Springvale.

3 MS. ROBESON: But it is underutilized.

4 THE WITNESS: Yeah.

5 MS. ROBESON: I have to give Mr. Brown a chance
6 and then I'll give Mr. Harris a chance to redirect. Mr.
7 Brown, do you have any cross-examination based on my --

8 MR. BROWN: (No audible response.)

9 MR. HARRIS: Nothing.

10 MS. ROBESON: All right. With -- yes, Ms. Volk?

11 MS. VOLK: Sorry.

12 MS. ROBESON: Is it Volk, V-O- --

13 MS. VOLK: Volk, yeah. Like the car.

14 RECROSS-EXAMINATION BY MS. VOLK

15 BY MS. VOLK:

16 Q The actual -- sorry. Mr. Harris questioned you on
17 number of traffic generated into Springvale but I want to
18 actually go into the actual formula, T equals whatever
19 number --

20 MS. ROBESON: Well --

21 BY MS. VOLK:

22 Q -- times U . And my question is this, according
23 to, according to the townhouses formula, if you plug that
24 in, $T = 0.48 \times 76$, and that is, that's 36, 37, correct? I'm
25 not the best at math.

1 A Yeah.

2 Q And then my next question is this. For, let's say
3 20 houses, that would be $T = 0.95 \times 20$. How much would that
4 be in the a.m.?

5 A It would, 19-ish. I --

6 Q That's lower than 38, right?

7 A The question, as I understood it, was comparing
8 our current assignments with a number of single-family
9 dwellings that Mr. Harris cited.

10 Q But it's a formula, right, that you're familiar
11 with?

12 A The formula I'm familiar with is that single-
13 family homes generate about twice as many trips per unit as
14 townhouses.

15 Q But I guess my question is with townhouses, there,
16 especially the EYA proposed townhouses, there are just more
17 units, correct?

18 A I don't know if --

19 Q So that's why you have this kind of number.

20 A -- there are more or less or the same number of
21 single-family dwellings because I've heard no testimony as
22 to how many single-family homes might, might be built on
23 this property.

24 Q Fair enough. Okay. Thank you very much.

25 MS. ROBESON: Okay.

1 MR. HARRIS: Okay.

2 MS. ROBESON: With that, we will take -- do you
3 have one more witness today?

4 MR. HARRIS: Well, no. No. We have four more
5 witnesses today I believe.

6 MS. ROBESON: Four more witnesses.

7 MR. HARRIS: But we're going to have to alter the
8 order if we can because three of the witnesses cannot stay,
9 so we would like to have them go next. They should be the
10 briefest witnesses because they're non-expert witnesses.

11 MS. ROBESON: All right. That's fine.

12 MR. HARRIS: So if we're prepared to go forward,
13 Mr. Teller would be next, please.

14 MR. TELLER: Good morning. My name is Jim Teller,
15 like a bank teller.

16 MS. ROBESON: Please raise your right hand.

17 (Witness sworn.)

18 MS. ROBESON: All right.

19 DIRECT EXAMINATION

20 BY MR. HARRIS:

21 Q Thank you, Mr. Teller. And if you have an
22 opinion, you're entitled to say it's your opinion. So
23 you're here and I appreciate your coming. If you would just
24 tell us why you're here and what you would have to offer for
25 this proceeding.

1 A Okay. I am a neighbor in the community. I live
2 at 9104 Kingsbury Drive which is, for those that don't know,
3 very close to the intersection of Colesville and Dale, just
4 a few blocks from the Chelsea School, and 10 years ago this
5 month, I moved into the home kind of in anticipation of the
6 revitalization of Silver Spring. That's kind of what caused
7 me to buy there versus other neighborhoods closer to
8 Bethesda or to Chevy Chase or even in the District where I
9 was living.

10 My occupation is, I'm a marketing director for an
11 apartment company and we, this will come in relevance, the
12 relevance of this will be later, that we have approximately
13 12,000 apartments, 34 locations, all different sizes of
14 multi-family complexes from as small as 71 units to 900
15 units so I've got a lot of experience on multi-family sites.

16 And although I don't practice anymore, I'm a landscape
17 architect and so I have a fairly extensive background in
18 site planning, landscape design and construction in the
19 multi-family industry. I kind of got tired of dealing with
20 the clients so it's a pleasure to work in-house for one.

21 MS. ROBESON: Mr. Youngentob didn't hear that.

22 THE WITNESS: No, no, no. No, no. It's better to
23 be the, be the owner than the client. I'm not the owner but
24 I work for the owner. So why am I here? I'm here to
25 testify in support of the EYA's, the proposed re-zoning for

1 EYA's project for the 76 townhomes. To be honest, I would
2 probably support even greater density on the site given its
3 proximity to the central business district, literally a half
4 a block away and given that, you know, there's walkable
5 transit, walkable neighborhood amenities, grocery store,
6 shops, restaurants, the existing library is across the
7 street, the new library is around the corner. Hopefully, in
8 my opinion, we'll have a purple line.

9 So all those things, and nearby recreation, these
10 are all everyday walkable amenities that so many in our
11 society are, either crave or we see a dramatic shift in
12 society in general where those things are more desirable and
13 people want to live near, near those things. So I would
14 support higher density but that's not what's on the table.

15 As, as you guys all know, the Chelsea site sits
16 one block from the central business district and it's
17 nearly, I'll say nearly surrounded by existing developments
18 that are higher density than what EYA is proposing. For
19 example, just across Ellsworth is a high-rise multi-family
20 building. Just across Cedar, under construction, is
21 Foulger-Pratt's multi-family project which is going to add I
22 think 225 apartments. Just less than a block away, just on
23 the other side of Pershing is Springvale Manor, a retirement
24 home which is I think three stories, three or four stories
25 and there's a surface parking lot, but the density on that

1 site is 58 units per acre.

2 So the least dense of the surrounding uses, for
3 the most part, is three times the density than what EYA is
4 proposing. I'm not saying that the single-family homes
5 don't fit into this equation but the point I'm making is
6 that the neighborhood is surrounded by mixed uses. It's not
7 solely a townhome development being proposed in the center
8 of a peaceful, quiet neighborhood. It's adjacent to other
9 very high-density uses.

10 So as you know, the Seven Oaks-Evanswood Community
11 Association has opposed the development and their primary or
12 initial objection was that the townhomes were a violation of
13 the master plan intent. Now, the Planning Board went into
14 great detail on this and so I'm not in a refute of that or
15 maybe that's not the best, they ruled against that saying
16 that they did not agree that it was a violation of the
17 master plan so I'm not going to go into any of that today.

18 What I found kind of odd during the testimony that
19 I've heard both in the SOECA neighborhood meetings, and I
20 listened to it online, I went online, rather, and viewed
21 the, a lot of the testimony that was made at the Planning
22 Board hearing, when I heard those things and saw those
23 things, that's when I decided I need, I want to come forth
24 and give a different perspective of a resident who has been
25 in the neighborhood for 10 years. What I found odd was that

1 so many of the folks, my neighbors, who I respect, so many
2 of their objections seem to have absolutely nothing to do
3 with the planning, I mean, with the master plan. They, in
4 my opinion, their objections frequently are unnecessary and
5 are based on, their, they are based on unnecessary fears.
6 Sorry. I'm new at this. This is my first time ever at one
7 of these.

8 MS. ROBESON: Take your time.

9 THE WITNESS: I kind of wrote it all out but I,
10 but I feel fairly --

11 MS. ROBESON: No. That's fine.

12 THE WITNESS: -- passionately about it mainly
13 because of my planning background. I can read plans. I can
14 envision built-out projects. I've got 20 years of
15 experience dealing with situations similar to this where
16 folks in the surrounding area, five years after, even a week
17 after the project is finished, saying wow, it looks so much
18 different, it looks so much different than what I thought it
19 was going to be, the impact is so much different than what I
20 thought.

21 So with that background and being able to read
22 these plans, I think there are a lot of fears that are
23 unjustified. Most of it's coming from an inability to
24 visualize what the completed project would be like, what it
25 would look like. They look at a plan, they see oh, 76

1 townhomes, 76 townhomes versus the supposed alternative of
2 25 single-family homes, that's three times so it must be
3 three times as bad, all the world's going to come to an end
4 if this gets built.

5 And so what I'd kind of like to do is go through a
6 few points of where, that some of those testifying in
7 opposition have made and kind of counter them one by one if
8 I will. So there's four points that I'm going to go through
9 today. One is the opposition states -- and I say
10 opposition, I mean, I don't mean to place it so clinically
11 because many, most of these people are my neighbors and
12 their opposition is well-intentioned but I think it's
13 misplaced because many of them don't have, like I said, they
14 don't have enough information, it's hearsay, they can't read
15 plans or they are, have a limited ability to read plans and
16 they can't truly visualize what the alternative project
17 should be like.

18 So the first one is that a 76 townhome development
19 is high-density and this is inappropriate for the
20 neighborhood. The next point is, that has been made, is
21 that EYA's townhomes will devour our neighborhood and
22 destroy its quality and character. Now, I'm quoting
23 directly from the testimony I heard when I'm watching the
24 Planning Board testimony online. Third is traffic from the
25 townhomes will overwhelm our peaceful, quiet neighborhood.

1 I've heard about birds chirping and children playing and
2 that all of this will come to a cataclysmic end if these 76
3 townhomes are built. And then the last one is that the site
4 is zoned for 25 single-family homes which is much less dense
5 than 76 townhomes to keeping the existing zoning means a
6 better fit with the neighborhood. So one by one, I'm going
7 to go through some of those things and why I believe those
8 are, like I said, well-intentioned objections but really
9 not, not correct or they're misguided, they're not based on
10 actual facts.

11 So the first one is that 76 townhomes are high-
12 density and this is inappropriate for the neighborhood. If
13 EYA's development truly was high-density, I would say that
14 statement would be true but I think it's, is it 16 units per
15 acre?

16 BY MR. HARRIS:

17 Q Fourteen, 14.67.

18 A Fourteen, 14.6 units per acre. So calling that
19 high-density is, really, it's an exaggeration. Some might
20 call it a gross exaggeration depending on which other
21 surrounding project you're comparing it to. If you compare
22 it to the high-rise across the street, and I don't have
23 these facts in front of me, but the high-rise across the
24 street is 15 stories. I think there are several hundred
25 units per acre in that one. If you compare --

1 MS. ROBESON: Is that Colesville Towers --

2 THE WITNESS: Colesville Towers.

3 MS. ROBESON: -- or the planned one?

4 THE WITNESS: Yeah. Colesville Towers.

5 MS. ROBESON: Okay.

6 THE WITNESS: Then you have, put the facts and
7 figures right here for me, 220 units per acre. Then you
8 look across the street, across Cedar which is where the
9 Foulger-Pratt is going to build 200-something townhomes,
10 200-something apartments. That's 112 units per acre. Even
11 like Springvale Manor which is an existing retirement home,
12 that's 58 units per acre.

13 So what are we really saying is high-density and I
14 heard this repeated over and over and over in the testimony,
15 that the EYA townhomes are very high-density. They're not.
16 Matter of opinion but if you compare it to the other uses
17 in the very, very close proximity to the neighborhood, I
18 don't know how you could call it high-density. It is higher
19 density than the single-family homes but it's not high-
20 density so it's, I think it's inappropriate to call it that.

21 The second point that was frequently made in the
22 Planning Board testimony, and I heard it in the SOECA
23 neighborhood meetings, is that the townhomes will divide our
24 neighborhood and destroy, the word destroy used over and
25 over again, destroy its quality and character. So I ask how

1 exactly are these cataclysmic events going to happen because
2 if they're being portrayed that way and it's going in the
3 testimony that way, then really, I try to make pragmatic
4 decisions. How is this going to be destroyed? How is it
5 going to divide our neighborhood?

6 The property is at the edge of our neighborhood.
7 It's in a corner up next to the central business district.
8 If this townhome development was a vacant lot in the center
9 of the neighborhood, I might feel differently but it's not.
10 It's at the edge of the neighborhood next to the central
11 business district, so there's no division of anything going
12 on in my opinion.

13 And so how is it going to destroy the quality and
14 character? Well, you know, I've seen EYA's plans, I've seen
15 plenty of their other developments. They did a very nice
16 job. The traditional architecture and the architectural
17 detailing, quality materials. They're smaller sized
18 townhomes, they're not these massive, massive things you
19 might see at Park Place, sorry if anyone's thinking of
20 buying one over there, they're much smaller and they're much
21 more intimately scaled. And they also, because of the
22 greenspace and the, some of the concessions that EYA has
23 made, they're really, it's tucked into this site nicely.

24 How does it destroy our quality and character of
25 the neighborhood? I don't know. Frankly, in my opinion,

1 what destroys the quality and character of a neighborhood is
2 when an owner of a home, smaller home, goes into the center
3 of the neighborhood and decides to tear down this home and
4 build a legal home five times its size or four times its
5 size, similar to what you see in Bethesda and Chevy Chase
6 and other close-in neighborhoods where it got so bad that, I
7 believe it was Montgomery County and certainly Chevy Chase,
8 has made laws against it. That destroys the character of a
9 neighborhood, not something on the edge of the neighborhood
10 that truly fronts one street, Springvale. So you plop a
11 5,000 square foot home in the middle of my block and I'm
12 going to be seriously irritated but this is not the same
13 thing. Our neighborhood's quality and character isn't going
14 to be destroyed.

15 The bottom line I believe is that we're not
16 discussing a massive development. I keep hearing this, this
17 testimony over and over and over, splitting hairs about one
18 trip this way and one trip that way. We're not talking
19 about a big development. It's 76 units. It's not big.
20 You know, EYA's projects built, I mean, there's not going to
21 be any destruction of anything we cherish. It just, it
22 almost irritates me when I hear the word destruction used
23 over and over again. The birds are going to continue to
24 chirp. The children are going to continue to play and we
25 are going, we are barely going to notice any change, if at

1 all, in our middle to upper middle class lifestyles.

2 And I say that to put things in perspective
3 because we read every day in the paper about floods and
4 earthquakes and volcanoes and people in these cataclysmic
5 events and what they're losing and at the end of the day, we
6 have pretty privileged lifestyles in our neighborhood and
7 we're talking about 76 townhomes, not anything more than
8 that. And so I kind of, I bristle a little bit when I hear
9 people talk about destruction of all the things that we've
10 known to love and cherish. It simply is, it sounds like
11 there's a lack of perspective when it comes to that.

12 So if anything, our lives are going to be enhanced
13 because we're putting people on the streets that have
14 disposable income. They're walking to downtown and what I
15 hope more than anything else, is this brings an additional
16 number of people similar to many of those of us in this room
17 and that live in the neighborhood that are willing to walk
18 and spend money in downtown Silver Spring and send messages,
19 send the message to retailers that Silver Spring is finally
20 a safe place to invest, and we have a serious problem with
21 that in Silver Spring where we are limited in our retail
22 development. We have plenty of bars and restaurants and
23 other things but retail is pretty limited, okay?

24 All right. So the next point that I want to talk
25 about that has been brought up a lot is that traffic from

1 the townhomes will overwhelm our peaceful, quiet
2 neighborhood, and I just listened to a good bit of that,
3 some testimony and cross-examination. And I'm not a traffic
4 engineer, I'm not a lawyer, but what I hear is a lot of
5 splitting hairs over one trip here, one trip there, two
6 trips here, two trips there. You know, those who oppose the
7 development claim that, you know, 76 townhomes, each with a
8 two-car garage is going to be 152 more cars.

9 The reality is, and it's been discussed ad
10 nauseam, is that not every one of these owners is going to
11 own two cars. Of those that do, not every one of them is
12 going to use both cars all the time given the very close
13 proximity to Metro, employment, the shopping that we do have
14 like grocery stores, et cetera, soon we'll have a CVS. You
15 know, even if, even if there were 152 cars, who can
16 reasonably believe that they would all depart and arrive at
17 the same time. That might overwhelm a street and it's
18 surrounding development, but 152 cars all arriving and
19 departing at the same time is more like what you would find
20 at a school which ironically, is what sits on that site now
21 and what some in the opposition would prefer to go back on
22 that site even if it means a larger school.

23 At the planning, at the Planning Board hearing,
24 this is about the point at which I decided I must come
25 testify, okay, so at the Planning Board hearing, I heard one

1 neighbor testify that townhome residents who use the Beltway
2 to get to work will race down Ellsworth to get to Dale Drive
3 because you said not all of them are going to exit out and
4 go out toward Silver Spring. If they need to get to the
5 Beltway, they're going to cut through the neighborhood.

6 I chuckled when I heard this. I live one block,
7 less than a block from the intersection of Colesville and
8 Dale and I can tell you no one in his or her right mind
9 would drive all the way down Ellsworth if they wanted to get
10 to the Beltway, to drive all the way down Ellsworth just to
11 wait in line for some nice neighbor, if we're that lucky, to
12 let them get out onto Dale. Then they're going to wait
13 another 5 or 10 minutes to get from Dale all the way up to
14 Colesville so they can turn right to get on the Beltway. It
15 ain't going to happen.

16 What they're going to do is they're going to turn
17 left onto, they're going to come out, they're going to turn
18 left onto Ellsworth and make a quick right onto Cedar at the
19 intersection of Cedar and Colesville, and you guys were
20 talking about this before and I believe the traffic engineer
21 whose name I don't know said well, we didn't do a study on
22 that. I'll give you a study. I've lived here for, lived
23 there for 10 years. I work in downtown spring every day,
24 downtown Silver Spring. I've done both. I've tried to
25 squeeze out onto Dale and I've tried to wait for the light

1 to turn so I could go. I finally gave up and what I do is I
2 go all the way down Ellsworth and turn right onto Cedar and
3 go to the intersection.

4 So for 10 years, off and on, I can tell you all
5 different times of the day, there is no one at the
6 intersection of Cedar and Colesville. No one in his right
7 mind would drive all the way down Ellsworth to get to Dale
8 when you can get onto Colesville in seconds. If I lived at
9 Chelsea Court, I could be on Colesville Road in seconds. At
10 the most, I've seen three cars there, four cars. Many of
11 them are turning left to get into downtown Silver Spring.
12 Hardly anyone is ever there. It's just basically an empty
13 intersection every morning and I've done it from 7:00 in the
14 morning to 9:00 in the morning. So all these passionate
15 claims that traffic is racing through our neighborhood, I
16 just don't see it happening.

17 The reality is -- and anybody who drives through
18 the neighborhood, if they really were to answer I believe
19 truthfully, the reality is that we're not going to see more
20 than a few cars on the road at any given time. On my daily
21 morning drive, if I drive down Ellsworth to Cedar, I rarely
22 see more than one or two cars, and I easily pass 75 to 100
23 homes. So how, I don't know how anyone can claim. We made
24 talk about traffic studies and all the formulas that are
25 used to apply and did you apply this level and this level

1 and this national standard. I live there and I see it every
2 day so I pass the, I pass 75 or 100 homes and if I'm not
3 seeing more than one or two cars, where is this massive
4 additional traffic going to come from that's going to
5 destroy our quality of life. So that's my, my opinion on
6 the second point that's been so passionately made in all of
7 this testimony.

8 The third one is that the site is zoned for
9 single-family homes which is much less dense than 76
10 townhomes so the existing zoning is a better fit. And
11 here's where I kind of pull from my background as a, as a
12 planner and my experience in understanding that the vast
13 majority of people aren't so good at reading plans and
14 aren't so good at converting a two-dimensional plan into a
15 three-dimensional image in their heads. If they were, and
16 those that are, frequently go into business as architects,
17 landscape architects, civil engineers, land planners, urban
18 planners. They're drawn to that. Most people can't read
19 plans as well. They're unable to visualize it.

20 So the reality is that there is no such proposal
21 for single-family homes on that site. The only proposal we
22 have is this one. But if or when we ever did get a proposal
23 for such, that theoretical alternative, the value of the
24 land and its really highly desirable location means that
25 we're not going to get 25 cute cottages like I live in. I

1 live in a 1700 square foot cottage. We're not going to get
2 that. We're going to get 4 to 5,000 square foot homes
3 similar to what was built on Woodside Parkway a few years
4 ago. I have nothing against that size home in and unto
5 itself. However, what would those homes look like on the
6 Chelsea site?

7 Well, there's, there are 3.85 developable acres on
8 the Chelsea site and so if you divide that by the allowable
9 25 home sites, that yields lots of approximately .15 acres.
10 Now, for a comparison, the house that I live in is .13
11 acres, just a little bit smaller, and it's one of the
12 smallest lots in the neighborhood. My home is, I said 1700,
13 it's actually 1750 square feet. It's a cottage. So are my,
14 both neighbors on either side. We have similarly sized
15 lots. Our houses are 16 feet apart from each other.

16 So imagine this same scenario where you have 25
17 houses, each 4 to 5,000 square feet tightly packed on the
18 same or just barely larger lots than what I have. What is
19 that going to look like? Is it going to look as cute as our
20 cute little rows of cottages sitting on the same size lots?

21 No. What it's going to be is a wall of tightly packed
22 McMansions. These houses are going to be three stories
23 tall, perhaps four if you count the dormer on the roof, with
24 two to three-car garages on the ground floor. Every one of
25 those garages is likely going to open up out onto Springvale

1 Road.

2 If you're looking along Springvale Road, what
3 would you see? A wall of homes three to four stories tall,
4 three-and-a-half stories tall, a wall of garages, a sea of
5 concrete because every one of them is going to want a car,
6 want a two-car garage at least, maybe some are going to want
7 a three, and they're going to be allowed to put it there
8 because that's what the site is currently zoned for. So you
9 take a look at this and what's a better view? Do you want
10 to be looking at a wall of these very large houses packed
11 in?

12 And by the way, their setback is only, is it 20
13 feet? is that the required setback where Chelsea has said,
14 or rather, EYA has said they're going to push back 30, 37
15 feet, almost twice as much. So the house could be almost 50
16 percent closer to the street. I believe the landscape code
17 only requires one shade tree per site similar to what they
18 did on Woodside Parkway. Chelsea said we're going to give
19 you twice as much room, we're going to put a nice green
20 buffer down. There's not going to be any driveways coming
21 in. The ends of our six houses versus, say, 12 are going to
22 look like single-family homes, much smaller, pushed back
23 from the street surrounded by shade trees and landscaping.
24 All I'm saying is that I don't think that the majority of
25 people and our residents can visualize what the supposed

1 alternative might actually look like if built out.

2 Now, this -- I mean, I, and this is really my
3 conclusion, I genuinely sympathize with the people, the
4 residents, my neighbors who live on Springvale. So for all
5 these years, they've been looking at and they've been seeing
6 a nice field, an athletic field which sometimes has buses in
7 it and sometimes it has students and people, children
8 playing. That's a nice view but it's going away, and I
9 empathize with that because I would like that view from my
10 front yard too but I don't have that.

11 But it's going to go away, so what do we really
12 want in its place? Is it -- do we want to look at 25
13 McMansions packed in there or do we want to look at 72 much
14 smaller townhomes clustered together and surrounded by
15 greenspace and landscaping and public use parks? I tend to
16 make decisions on a very practical matter. It's not that I
17 -- from a planner's perspective, I would rather see the
18 higher density but if you say well, it's not going to be re-
19 zoned and you put these 25 homes here, I mean, have I just
20 cut my nose to spite my face. Well, I preserved that
21 existing zoning but now look what I have. I have a wall of
22 homes packed in together and frankly, I just don't think
23 that's the right way to go.

24 So the other option is, and we can discuss other
25 options ad nauseam, as it's been made clear from what I

1 understand from EYA, from Chelsea School, that neither a
2 lower density townhome project has been proposed and that
3 also, single-family, we know single-family aren't being
4 proposed, and the alternative is that there could be another
5 school there and as I understand it, if it's a parochial
6 school, if they sell it to a parochial school, we could have
7 400 students on that site. And so imagine the change in
8 traffic and daily activity that you get from a current 86
9 student school to the potential to 400 students, so do we
10 really want that?

11 So I don't think another school is anymore
12 compatible to community than EYA's proposal especially if it
13 were to be a 400 unit school, 400 student school. You know,
14 the goal of this hearing, as I understand it again, is to
15 determine whether the site should be re-zoned to RT-15 and
16 based on the evidence, the plan, the context in the
17 neighborhood, my own perceptions of it as a planner with a
18 lot of experience and understanding what the finished
19 product would look like, I think the zoning is, would be
20 very appropriate, re-zoning of the site would be very
21 appropriate given the surrounding uses, the proximity to
22 downtown and the quality of the plan as proposed by EYA.
23 Thank you.

24 MS. ROBESON: Thank you. Before we go further, I
25 am going to call just a five minute break. I know that you

1 have witnesses waiting but we have to come back in five
2 minutes, okay?

3 MR. HARRIS: Thank you.

4 MS. ROBESON: We're going off the record.

5 (Whereupon, at 12:08 p.m., a brief recess was
6 taken.)

7 MS. ROBESON: All right. We're back on the record
8 and --

9 MR. HARRIS: Just a couple followup questions --

10 MS. ROBESON: Okay.

11 MR. HARRIS: -- for Mr. Teller.

12 BY MR. HARRIS:

13 Q Mr. Teller, there was testimony earlier at this
14 hearing that you weren't at that the possible development of
15 this property, under the existing zoning, might be 39 units.
16 You talked about the 25. It's an obvious question but
17 would the impact that you spoke of at 25 units be greater if
18 39 units were on there?

19 A Thirty-nine homes?

20 Q Thirty-nine single-family homes, yes.

21 A It would be awful.

22 Q And --

23 A Compared to what already would be what I think is
24 an undesirable situation with 25 single-family homes.

25 Q And if it turned out that under the MPDU optional

1 method that one would be entitled to use at that number of
2 units, the lot size is only 4,000 square feet, would that
3 be, add to your comments about the ill effects of a single-
4 family detached home?

5 A Yes. It would add to them proportionately in the,
6 in the same proportion that the lot sizes are being
7 diminished and the same, and a similar size house being
8 squeezed onto these smaller lots.

9 Q And if it --

10 A So, yeah. They'd be closer, they'd look more
11 dense, more packed in but, you know, they would already be
12 packed in at the 25.

13 Q And if it were the case that in that zone, the
14 existing zone, there would be no side yard setback
15 requirement if you developed under the optional method for
16 MPDUs, does that add to that issue?

17 A No side yard setback which means the houses would
18 be, there would be a zero lot line?

19 Q If that were a possibility, does that make it
20 worse?

21 A In each scenario you just described, the
22 McMansions get closer and closer and closer to each other so
23 compared to EYA's where you have a park in the front, you
24 have public space on the side, you actually can look through
25 the townhouse, rows of townhouses to the other side, so the

1 wall gets more and more dense with less light creeping
2 through.

3 Q And if the Zoning Ordinance allowed, under that
4 same scenario, 40 feet of height as opposed to the 35 feet
5 of height that the RT zone allows, would your answer be the
6 same as to the ill effects of that as well?

7 A It would be more so because of course, they're
8 higher. You're looking at a four story home versus a three
9 story home with a dormer window at the top.

10 Q Now, a number of your neighbors have come either
11 in person to speak in opposition to this, some have written
12 emails and some have signed a petition. Can you explain to
13 us why you have a different view and how your, how you've
14 made your decision?

15 A Well, I mean, I came here and you're kind of
16 hearing the culmination of all of the time I've spent
17 looking into this project, researching it and going to SOECA
18 meetings, reading SOECA newsletters, listening to both
19 presentations at SOECA meetings by so-called experts or
20 experts, and hearing from the neighbors themselves, some of
21 them at meetings either at SOECA or in individual homes both
22 in support and against. What -- I'm trying to think how I
23 want to phrase my answer.

24 I started to, when I first started to question it
25 was when I started getting SOECA newsletters claiming that

1 the majority of the, majority of the neighborhood was
2 against this. I said well, I don't remember anybody coming
3 to my house and asking that. We took a survey. All right.
4 So I went to SOECA. In the group, I asked the meeting,
5 because I had not been going to all of the SOECA meetings,
6 this was kind of what started me going to them, and I asked
7 outright I need to make a decision on which side of the
8 fence to be on in this project. Tell me about the survey
9 because you're going now before the County and saying as my
10 representative of my neighborhood, you're saying the
11 neighborhood is against this because of overwhelming
12 opposition. And I said how was this survey taken because
13 nobody ever came to my house but, you know, tell me what you
14 did.

15 And the answer I got in front of the group was no,
16 we took a, what we did was we surveyed the neighbors in the,
17 the immediately surrounding area on the street because we
18 felt like they were great, more greatly impacted than the
19 rest of the neighborhood, and so I said so you essentially
20 surveyed about maybe 100 homes. I forgot what I asked. I
21 said well, there are 700 homes in the neighborhood. And so
22 they said well, we felt like those homes were more impacted
23 because of their proximity and so their value of their
24 opinion was greater and I neither denied nor challenged
25 this. I had no opinion on it.

1 But where it kind of started to bug me a little
2 bit was now my neighborhood association, which I'm a, you
3 know, dues-paying member, is saying this is what we believe,
4 this is what all of us believe by majority, but that's not
5 necessarily the case. I was also told that they had a
6 meeting in the library, at the library and again, I'm just
7 reiterating the answer that was given to me because I didn't
8 attend this meeting at the library where a vote was taken.
9 I wasn't there so they told me -- am I going on about the
10 wrong thing? Sorry.

11 MS. ROBESON: Well, A, it's hearsay which --

12 THE WITNESS: Okay.

13 MS. ROBESON: -- you can have in an administrative
14 proceeding but I'm not sure how relevant it is. The
15 question here is, you know, whether it's compatible, whether
16 it meets the purposes of the zone, that kind of thing.

17 THE WITNESS: I misunderstood your question.

18 MR. HARRIS: That's fine. That's fine.

19 THE WITNESS: I thought he was asking how I came
20 to my decision.

21 MR. HARRIS: Yes.

22 MS. ROBESON: No. That's fine. From a, you know,
23 from a planner's perspective, which you have been a
24 landscape architect --

25 THE WITNESS: From that perspective, I looked at

1 what EYA originally proposed and I thought it was okay, and
2 then I attended a few meetings where neighborhood, neighbors
3 such as myself offered suggestions on how to even further
4 reduce the impact and then they came back with a plan which
5 is what you see up here today that incorporated virtually
6 everything we suggested.

7 And so I saw that they pushed the units as far
8 back into the site as they could further towards Cedar by
9 putting the street, the through street in the middle so that
10 increased the number of off-street parking spaces within the
11 development. I saw that they removed, this was my favorite
12 part, they removed the end units off of the six rows that
13 face onto Springvale so now you have instead of 20 feet
14 back, you have 37 feet back from Springvale. Then they go
15 through and they put the double row of shade trees and a
16 linear park and all of these, all of that combined with a
17 big public park at one end, another park at the other end,
18 all of which, we're in a neighborhood that's full of parks.

19 And I saw that they did all these things and I
20 said this thing is literally surrounded by, even though it's
21 adjacent to our single-family homes, it's literally
22 surrounded by parks and heavy landscaping. And I know that
23 in a couple of years after these trees are planted, you
24 won't even notice these houses, the townhomes, the end
25 units. And that the end units look like the front facades

1 of single-family homes. So from Springvale, you see one,
2 two, three, four, five, six and a long row of shade trees.
3 That's how I made my decision why that was far more
4 acceptable than a row of, say, 12 35-foot tall or 40,
5 whatever it ends up being, single-family homes with garages
6 and driveways towering over the street just 20 feet off of
7 Springvale. So that was pretty much a no-brainer for me.

8 MR. HARRIS: Okay. I have no further questions.
9 Thank you.

10 MS. ROBESON: I just had a couple. Can you put --
11 is that Exhibit 130 at the base there --

12 MR. HARRIS: Yes, it is.

13 MS. ROBESON: -- with the densities? I guess you
14 said that it is not in the interior but I did have the
15 opportunity, I don't know if you've read the master plan, I
16 did have the opportunity to look at the master plan and it
17 defines the edges as the CBD and major highways but it also
18 says that Wayne Avenue is a major highway. So there is a
19 block south -- and it also calls the 58 DU, the Springvale
20 Terrace there, it also calls that an institutional use, not
21 a residential use.

22 So I guess my question is if Wayne, and it shows
23 Wayne as a boundary of the neighborhood, is, what does that
24 do to that square there below south of Springvale Terrace
25 and east of the subject property?

1 MR. HARRIS: This area?

2 MS. ROBESON: No. Up.

3 MR. HARRIS: South of Wayne.

4 MS. ROBESON: No, no. I'm sorry. South of
5 Springvale Terrace. East, west of Wayne.

6 MR. HARRIS: This block?

7 MS. ROBESON: Yes. What do you think the impact
8 on that is going to be?

9 THE WITNESS: You're asking the question to me?

10 MS. ROBESON: Yes.

11 THE WITNESS: You're talking about what is the
12 immediate impact from if the 76 townhomes are built?

13 MS. ROBESON: Correct.

14 THE WITNESS: Fairly negligent.

15 MS. ROBESON: And why do you say that?

16 THE WITNESS: Because I don't think we're going to
17 see more than one or two cars at a time coming or going out
18 of this development. All of them aren't going to turn or go
19 the same direction at the same time. Many people that live
20 in this development are going to walk to downtown Silver
21 Spring. Not all the time but not, but then we also don't
22 have all these people leaving and coming at the same time.

23 MS. ROBESON: But what about a visual, a visual
24 impact?

25 THE WITNESS: I don't think you're going to have

1 any because the historic house, where is it, the historic
2 home has to stay, right?

3 MR. HARRIS: Yes.

4 THE WITNESS: Okay. So you're not going to see
5 them. We're not tearing it down so from the corner, you're
6 going to look in and see there's a park at the corner and
7 then there's a row of townhomes.

8 MS. ROBESON: Okay.

9 THE WITNESS: That's the impact.

10 MS. ROBESON: Okay.

11 THE WITNESS: Versus 25 5,000 square foot homes so
12 that's, it was really kind of, like I said, a no-brainer for
13 me. What would I rather look at, smaller townhomes
14 clustered in, more or less in the center of the site, or 25
15 5,000 square foot homes more or less pushed to the edge of
16 the site with a much greater visual impact? It wasn't as,
17 wasn't too complicated a decision for me.

18 MS. ROBESON: Okay. Mr. Brown?

19 CROSS-EXAMINATION BY COUNSEL FOR OPPOSITION

20 BY MR. BROWN:

21 Q Mr. Teller, on this Exhibit 112G, Chelsea's
22 neighborhood context aerial photograph, could you show us
23 where you live?

24 A Let's see. Just off the site. Rowen Road
25 intersects Colesville Road and then --

1 MS. ROBESON: You mean off the --

2 THE WITNESS: Yeah. Just off the --

3 MS. ROBESON: Off the exhibit?

4 THE WITNESS: Yeah. Just off the plan.

5 BY MR. BROWN:

6 Q So you're not in what they thought of as the
7 neighborhood, right?

8 A I'm a member of SOECA so I might be. I should be.

9 MR. HARRIS: Well --

10 BY MR. BROWN:

11 Q Let's take a look at it.

12 A Yeah.

13 Q Can you point out where you are on here?

14 A Let's see. Colesville Road. I'm in this lot
15 right here, no. 8, the small one.

16 Q You're on Kingsbury off, half way between Rowen
17 and Dale, right?

18 A That's right.

19 Q How many blocks away is that from the subject
20 property?

21 A Looks like one -- I mean, are we counting a block
22 from street corner to street corner or are we counting --

23 Q Well, you tell me.

24 A I'm about a five minute walk from there. That's
25 about the best way to put it. And that's about walking at a

1 slow pace.

2 Q Now, Mr. Teller, you've demonstrated a lot of
3 knowledge here about planning and zoning. Let me ask you a
4 planning and zoning question. What are the ways in which a
5 re-zoning can be accomplished?

6 A You know, I'm not currently in planning and
7 zoning. What I'm saying --

8 Q You understand that this is a re-zoning, don't
9 you?

10 A Yes.

11 Q We're talking about changing from R-60 to R-15.
12 RT-15. Did you know that?

13 A That, oh, that, of course. In order to allow the
14 higher density with the townhomes, yes.

15 Q Now, did you know that in Maryland, you're not
16 allowed to change a zoning if there's been, if there's been
17 no change or mistake in the original zoning?

18 MR. HARRIS: Objection.

19 MS. ROBESON: And the basis?

20 MR. HARRIS: That is not correct.

21 MS. ROBESON: Mr. Brown?

22 MR. BROWN: The basic rule is unless you can
23 qualify for a re-zoning in some other way, the basic rule is
24 that you don't get to willy-nilly change the zoning on a
25 property unless you can demonstrate change or mistake.

1 They're not trying to do that.

2 MR. HARRIS: That is --

3 MS. ROBESON: Okay.

4 MR. HARRIS: -- not correct.

5 MS. ROBESON: Mr. Brown, the test here is meeting
6 the purpose clause.

7 MR. BROWN: I'm getting to that.

8 MS. ROBESON: All right.

9 MR. BROWN: I'm getting to that.

10 BY MR. BROWN:

11 Q We're not talking about change or mistake here,
12 are we?

13 A I'm simply, as a neighbor, evaluating the three
14 options as they've been presented to me. One is 76
15 townhomes, the other is 25 single-family homes, and the
16 other is the potential for a school up to 400 students. I
17 mean, I really don't -- I'm not the developer. I'm not
18 acting or working for the developer. I'm just a neighbor
19 and a citizen.

20 Q Do you know what a floating zone is?

21 A I do not.

22 Q Did you know, is it your opinion that this is
23 high-density or low-density or medium-density within the
24 parameters of a floating zone?

25 A I don't know enough about the definition of

1 floating zone in order to answer your question
2 intelligently.

3 Q What is the maximum --

4 A Or in the way you might want me to respond.

5 Q What is the maximum density that can be achieved
6 through a floating zone re-zoning.

7 A I don't know. I don't know and I don't, frankly,
8 I don't know why that's -- it may be relevant in the context
9 of what the developer has proposed but it's not relevant in
10 the context of --

11 MS. ROBESON: Well --

12 THE WITNESS: -- me understanding my three
13 choices, is it?

14 MS. ROBESON: No. I -- the relevance goes to your
15 knowledge of the area, so you do need to answer the
16 question.

17 THE WITNESS: Okay. All right. Ask one more
18 again, one more time, please.

19 BY MR. BROWN:

20 Q Is this zoning at 14.67 dwelling units per acre in
21 the low range, the medium range or the high-end range of
22 what can be accomplished through floating zone re-zoning
23 using the --

24 A I don't know the answer.

25 Q -- RT zone?

1 A I don't know the answer to that question.

2 Q You just know that the citizens who say that, who
3 use the word high-density in that context don't know what
4 they're talking about. That's your testimony, isn't it?

5 A No. That's not what I said. What I said is
6 they're using that, constantly calling this a very high-
7 density. Then what are the surrounding, what are the
8 surrounding uses?

9 Q How about using that term in the context of what
10 is achievable on this site through re-zoning? You haven't
11 studied it from that point of view, have you?

12 A No. I didn't know it was necessary to do that.

13 Q All right. One more question. Do you see any way
14 within the parameters of RT-15 zoning and the need to
15 preserve the historic setting and the need to provide 40
16 percent greenspace, where they could have squeezed in even
17 one, two or three more units possibly on this site than they
18 have done?

19 A Yes, and they removed them.

20 Q Where is that?

21 A Units were, weren't they -- and I would have to go
22 back to --

23 MS. ROBESON: No. You can't, if you --

24 THE WITNESS: I'm not allowed to do that?

25 MR. HARRIS: No.

1 THE WITNESS: Okay. The original proposal --

2 MS. ROBESON: This is to your recollection.

3 THE WITNESS: To my recollection then, the
4 original proposal showed -- I'm sorry. They did not. I'm
5 mistaken. They weren't removed off the site. They were
6 rearranged on the site.

7 BY MR. BROWN:

8 Q Thank you.

9 A That's right. That's right. To allow greater
10 grenspace.

11 MR. BROWN: No further questions.

12 MS. ROBESON: Yes, Ms. Volk.

13 THE WITNESS: It's Volk or Volt? I didn't hear
14 you before.

15 MS. VOLK: Volk.

16 THE WITNESS: With a "K", okay.

17 MR. HARRIS: With a "K", yes.

18 MS. VOLK: Volk. Song Volk, 8504 Springvale Road.

19 CROSS-EXAMINATION BY MS. VOLK

20 BY MS. VOLK:

21 Q I'm sorry. I didn't hear your first initial
22 testimony. You said that, the first part, you said you're a
23 marketing director for an apartment company?

24 A Yes.

25 Q So basically, you are affiliated with one

1 apartment complex essentially and --

2 A No.

3 Q -- you market with that?

4 A No. We have 34 apartment complexes throughout the
5 Metro Washington area and none in the District of Columbia.

6 Most of them are in suburban, close-in suburban locations
7 in Virginia and Maryland.

8 Q Okay. So you would also be the market director
9 for some of the high-end, sorry, the high-density apartment
10 complexes in Silver Spring as well, the CBD?

11 A No, I would not.

12 Q You're not?

13 A We don't have anything in downtown Silver Spring.

14 Q Do you advertise and do marketing for apartments?

15 A That's right.

16 Q Do you advertise or do marketing for townhouses?

17 A Never.

18 Q How are you --

19 A Oh, you know what? I disagree. A few of our, a
20 few of our communities were built with some townhomes,
21 rental townhomes in them but primarily, they're multi-family
22 units stacked on top of each other, either garden style mid-
23 rise with elevator or high-rise with elevator.

24 Q Do you advertise for EYA townhouses?

25 A No.

1 Q How are you acquainted with EYA?

2 A Well, being a planner by blood, even though I
3 don't practice anymore, I kind of, I take an active interest
4 in pretty much anything that's built in Silver Spring and
5 throughout the Washington area so EYA is well-known. I knew
6 about them as a developer long before they proposed this
7 project. I was familiar with what they did in downtown
8 Silver Spring. I was familiar with what they did at
9 Seminary. I'm familiar with what they've done in Arlington.
10 Even without knowing that it's EYA, I found out
11 later that some of those projects that I like and I admire
12 how they work in the neighborhood, you know, I found out
13 later that's, who the developer was. In fact, I never met
14 any of these guys until the first time I saw their
15 presentation on the project. No affiliation. Just admired
16 their work from afar as a quality developer.

17 Q Have you read the master plan?

18 A I have. At least I've read the sections that were
19 included in the planning zone, Planning Board report when
20 the staff recommended in favor of re-zoning. That's, those
21 are the sections that I read because that's what was germane
22 to this project, but I have not committed it to memory.

23 Q So you have not read the entire master plan?

24 A No. I have not read the entire master plan.

25 Q Are you aware that the master plan talks about

1 trying to protect and stabilize edge neighborhoods or edge
2 communities close to the CBD?

3 A Yes.

4 Q You are aware of that?

5 A I remember something to that effect.

6 MS. VOLK: I think I want to bring up Exhibit 130
7 if I can.

8 BY MS. VOLK:

9 Q Can you define for, for here what is an edge
10 street or an edge community?

11 A I cannot.

12 Q You cannot. So do you -- is this the CBD down
13 here --

14 A Yes.

15 Q -- on the --

16 A Yeah. From what I understand, Cedar Street is
17 the, the defining edge.

18 Q Okay. So this is the, I have to say it out loud,
19 the lower left-hand side of Exhibit 130. So you, right
20 here, the Cedar Street that bounds the CBD right here, that
21 is the edge?

22 A As I understand it.

23 Q As you understand it. So this area right here,
24 which is the lower right of Exhibit 103, is that bordering
25 the edge?

1 A I don't know. As I understand it, Cedar Street is
2 but I don't know the answer to the question.

3 Q So we have here the CBD on the lower left-hand
4 side, Cedar Street which bounds it, which you say is the
5 edge street, but you do not know if this one block area here
6 on the lower right-hand side of Exhibit 130 is, if that's an
7 edge neighborhood.

8 A That's right. That's correct. I don't know that.

9 Q Is the, for example, is some of these other
10 properties here identified on the lower right side, are they
11 edge neighborhoods? Do you know that?

12 A I don't know the answer to that.

13 Q Okay. Thank you. Actually, can you tell me how
14 many blocks you live from the CBD? Blocks, not minute
15 walking, walks.

16 A Well, they're, I think it's about six but they're
17 not equidistant blocks. Some are very short and some are a
18 little longer than others.

19 Q So six blocks?

20 A Yes. But like I said, some are very short blocks,
21 some are longer than others so --

22 Q Okay. So you live --

23 A -- if you're looking for an exact measurement, I
24 would have to pull the wheel out and walk it out for you.

25 Q All right. But roughly, you live about six blocks

1 away from the CBD.

2 A Yeah.

3 Q Okay. How many blocks away do you live from the
4 Chelsea School site?

5 A I guess that would be about four, four to five.
6 Chelsea is one block from the CBD.

7 Q Are you aware of the number of apartments in the
8 CBD that are available for rent or for lease?

9 A No. But I can get that information separately for
10 you if you'd like.

11 Q That's fine. Would you happen to know --

12 A I can tell you that demand is high and supply is
13 low.

14 Q Oh, so supply is low.

15 A Relatively speaking, yes.

16 Q Okay.

17 A The demand has increased.

18 Q Are you aware there are a lot of apartments down
19 in the CBD that are for rent or for lease?

20 A We don't, in my capacity as marketing director,
21 the product that we have doesn't compete directly with the
22 apartments in the central business district. We don't have
23 anything in the central business district so I'm not
24 intimately affiliated with that. I have access to all that
25 information but that's not something generally I would need

1 to know exact information on.

2 Q But as part of your job, you are aware of the
3 different types of high-density developments in the CBD.

4 A Sure.

5 Q Okay. Are you a zoning expert?

6 A Not at all.

7 Q Are you aware that to get a special exception, a
8 developer has to meet a legal standard?

9 A I would assume. I don't know the answer to that
10 question because I --

11 Q So you're not aware.

12 A Well, I'm not aware of what the definition of
13 legal standard is and are there certain hoops of
14 requirements that they have to go and they have to meet and
15 certain requirements, certain tests, of course I know that.
16 Most citizens do. But as far as whatever you're defining
17 legal standard as, if that's a phrase you're using that, you
18 know, that may be in the language of approval, I don't know
19 the answer to that question. So if you could ask your
20 question a little more directly if there is one --

21 Q Sure.

22 A -- if you can articulate better, that might help
23 me.

24 Q Sure. I'm sorry. Because, I figured because of
25 your background --

1 A No, no. I haven't, as I said before, I haven't
2 practiced as a landscape architect in many, many years,
3 okay, but my ability to visualize a project after it's
4 completed hasn't been diminished one bit so that's what I'm
5 getting at. So I think maybe you misunderstood my current,
6 current capacity and what I used to do.

7 Q Okay. I guess I just -- well, I'm going to take
8 that back.

9 A We don't want to assume, do we? Yeah.

10 Q Are you aware of the purposes clause?

11 A No.

12 Q So you are aware that there are several zoning
13 requirements in order to change from one zone to another but
14 you don't know the exact --

15 A No.

16 Q -- elements or standard of legal review.

17 A No, I don't.

18 MR. HARRIS: Ms. Robeson, a lot of this is going
19 well beyond the scope of his direct exam. I've let it go on
20 a little bit out of, you know, respect.

21 MS. ROBESON: Well, I think she's still within it.

22 MS. VOLK: Thank you.

23 MS. ROBESON: But, you know, he does -- well, keep
24 going.

25 BY MS. VOLK:

1 Q Are you aware with RT-15 zoning that it is the
2 highest density zoning allowable for townhouses?

3 A I think I remember that from a SOECA meeting.

4 MR. HARRIS: Objection.

5 THE WITNESS: I don't know.

6 MR. HARRIS: Objection.

7 THE WITNESS: I just remember that being said.

8 MR. HARRIS: That is an incorrect premise.

9 MS. ROBESON: She asked. If he doesn't know, he
10 can say he doesn't know.

11 THE WITNESS: I remember that being said at a
12 SOECA meeting.

13 MS. ROBESON: Right.

14 THE WITNESS: Whether that's true or not, that, I
15 just, all I'm saying, that's my only interaction or
16 understanding of it is from what I heard presented.

17 BY MS. VOLK:

18 Q Do you know when the Colesville Towers was built?

19 A Sometime in the '60s.

20 Q In the '60s.

21 A Um-hum.

22 Q Okay. Do you know when the first master plan was
23 developed?

24 A No.

25 Q Were you aware that the first master plan was

1 developed in the 1970s?

2 MR. HARRIS: Objection. He just answered he --

3 THE WITNESS: I just answered.

4 MR. HARRIS: -- didn't know when it was.

5 MS. VOLK: Okay.

6 BY MS. VOLK:

7 Q Could Colesville Towers be an outlier in that
8 residential area since it's --

9 A Could you ask the question again?

10 Q -- built in the 1960s?

11 A Could it be?

12 Q Could it be?

13 A I didn't understand your question, I'm sorry.

14 Q Oh, because, since Colesville Towers was built in
15 the 1960s and because the master, first master plan was
16 developed in the 1970s, could Colesville Towers be
17 considered an outlier in that residential area?

18 A I can't answer your question because I don't know
19 how the term outlier is specifically defined within the code
20 or, I don't practice in that area so I don't know right now.

21 Q You said it was a very high-density development,
22 correct?

23 A It's 200 and something units per acre, 220.

24 Q And it's somehow in the interior of, outside of
25 the, it's somehow outside of the CBD, correct?

1 A The way I described it in my testimony is that it
2 is in very close proximity, in visual proximity. You can
3 see it from the site, you can see it from our neighborhood.
4 If you, if you'd like, I can repeat it. What I said, I
5 didn't get into the details of what is called the CBD, what
6 is not, where's the boundary line. We're talking about what
7 are we going to experience when we're standing on the ground
8 looking at this development, what's immediately surrounding
9 us and, and is it so out of place to have a townhome
10 community at this density when there are other developments
11 at much higher density and some at lower density in the
12 immediate surrounding area. That's really all that I
13 brought up, not a technical zoning issue, not --

14 MS. ROBESON: Well --

15 THE WITNESS: -- a technical planning issue.

16 MS. ROBESON: Well, you did -- I think what she's
17 getting at is Colesville Towers an anomaly because it's so
18 old and pre-master plan.

19 THE WITNESS: I guess it was grandfathered in.

20 MS. ROBESON: Should it be used for compatibility
21 purposes?

22 THE WITNESS: Only in the context that it is a
23 fact on the ground. It's there.

24 MS. ROBESON: All right.

25 THE WITNESS: And whether or not it would be

1 allowed today is, I mean, it might be relevant, it might not
2 be but there it is. You can't miss it.

3 BY MS. VOLK:

4 Q You're a marketing director for apartment
5 complexes. Wouldn't it be reasonable to say that you're
6 very familiar and comfortable with high-density developments
7 as concepts?

8 A Yes and no. And the fact is most of what we have
9 are established B and C class communities. We're not doing
10 high-end A, triple, double A, triple A development in new
11 infill locations. For example, these are communities,
12 apartment communities that have been there for decades.

13 Q Would it be reasonable to believe that someone who
14 is not in your profession and who are not, you know, just a
15 regular Joe Schmo citizen might not be as comfortable with
16 the concept of high-density developments or even medium-
17 density developments?

18 A I can't speak for what someone else might be
19 comfortable with or not. What I testified earlier, based on
20 my experience as a landscape architect and also, from my
21 experience hearing my other, some of my neighbors, not all
22 of them, some of my neighbors describe the alternative
23 scenarios that they envision from the site. What I gathered
24 from a lot of that is many of them could not visualize what
25 the 76 townhomes, as proposed, would look like compared to

1 the 25 single-family homes. That's what my testimony was
2 about and that's how I came to my, came to have the opinion
3 that they couldn't visualize it. Hearing them. Hearing
4 what they said.

5 Q So even after the many discussions between some of
6 the residents and EYA, EYA somehow or another did not enable
7 them to properly visualize or could not visualize what these
8 developments would look like?

9 MS. ROBESON: Ms. Volk, I'm not sure where these
10 questions are going, whether --

11 MS. VOLK: I'll withdraw that.

12 MS. ROBESON: -- EYA, you know, had the right
13 presentation or not, I don't think that's relevant.

14 MS. VOLK: I'll withdraw that, sorry.

15 THE WITNESS: Yeah. I think that's the kind of
16 thing that's, it's built in, like some people can read maps
17 and understand north/south/east/west and can instantly
18 convert that into a three-dimensional image in their head,
19 and other people couldn't find their way out of a paper bag
20 because they're more landmark oriented and not distance and
21 direction oriented. I mean, that's just the way certain
22 people are wired so --

23 BY MS. VOLK:

24 Q I agree. Some people can read --

25 A Yes.

1 Q -- documents and legal standards and stuff.

2 A Yeah.

3 Q 600 to \$800,000 townhouses. Do middle and upper
4 class people afford those?

5 A I cannot possibly answer that question.

6 Q Do you know how many buses come to the school
7 every day?

8 A I don't but I've seen, I've seen several parked
9 there at any given time when I pass by there but I can't
10 tell you the exact count, no. And plus, I see them parked
11 on the lot that's visible from Springvale.

12 Q On their parking lot.

13 A Yeah.

14 Q Okay. So the buses on the parking lot.

15 A Right.

16 Q Okay. Colesville Road --

17 A On the weekend also.

18 Q Colesville Road, you talk about the traffic there
19 but then you also talk about how you go through the interior
20 of the neighborhood and how it's pretty quiet, correct?

21 A Not my street.

22 Q Well, not your street, but I would say closer to
23 where my street would be. It's pretty quiet, correct?

24 A More or less. I mean, the times that I've been
25 there, I mean, but quiet is a relative term.

1 MS. ROBESON: If you know. I mean --

2 THE WITNESS: Yeah. I don't -- I'm not sure what
3 the question is.

4 BY MS. VOLK:

5 Q Okay. Your testimony was based in part on talking
6 about taking different routes throughout the interior
7 neighborhoods wherever that may be.

8 A Um-hum.

9 Q And stating that those are very quiet streets.

10 A Yes. Relatively speaking, quiet.

11 Q So those are quiet streets. Those are streets
12 where there is no current townhouse development in there,
13 correct?

14 A That's right.

15 Q You're talking about the quiet and slow pace of
16 streets that do not currently have townhouse developments
17 nearby, correct?

18 A None that I know of.

19 Q Mr. Harris walked you through a scenario where
20 there's huge McMansions I guess on that proposed property
21 site, correct?

22 A Could you repeat what you're asking? I'm not sure
23 what the question is.

24 Q Mr. Harris had walked you through a scenario where
25 there were McMansions and they have, may be built on that

1 site as opposed to townhouse units, correct?

2 A Yes.

3 Q McMansions, that's just only one potential
4 possibility for development in that area, correct?

5 A I don't know. Actually, I don't know of any
6 single-family home development that's been proposed for the
7 site.

8 Q But the scenario he walked you through talking
9 about McMansions, that's just one possibility of many that
10 is possible for that land, correct?

11 A I --

12 Q They don't all have to be McMansions, correct?

13 A I don't know the answer to that question because
14 none has been proposed.

15 Q Okay. So if someone walked you through a
16 proposal, there doesn't have to be just one type of housing
17 or one size housing, correct? There's a lot of choices,
18 correct, that, that's possible?

19 A For example, 76 townhomes, yes.

20 Q If they meet the legal standard, yes. Were you, I
21 believe you said you were not at the SOECA meeting around
22 May 2010 regarding the vote on whether to support or oppose
23 the proposed --

24 A No. I was not at the actual meeting, no.

25 Q You did not vote at that meeting, correct?

1 A No.

2 Q Are you an expert on traffic?

3 A No.

4 Q Thank you very much.

5 MR. HARRIS: No --

6 MS. ROBESON: All right.

7 MR. HARRIS: No further questions.

8 MS. ROBESON: No further questions. Thank you,
9 Mr. Teller.

10 THE WITNESS: Thank you.

11 MS. ROBESON: Mr. Harris, your next witness?

12 MR. HARRIS: Mr. Bacon I believe? Yes. Thank
13 you.

14 MS. ROBESON: Please raise your right hand.

15 MR. BACON: Certainly.

16 (Witness sworn.)

17 MS. ROBESON: Go ahead.

18 DIRECT EXAMINATION

19 BY MR. HARRIS:

20 Q Mr. Bacon, thank you also for coming and devoting
21 your time to this. You can tell us whatever you care to
22 speak about today.

23 A Sure. Just so I stay on course, I'm just going to
24 start reading from my paper. I'm Robert Bacon of 504 Dale
25 Drive. I'm in support of the Chelsea Court townhome

1 community and historic preservation. Having been raised in
2 the Silver Spring suburbs of the Springbrook School District
3 with my immediate family having transplanted into the area
4 in the early '70s, I am familiar with the evolution journey
5 of much of the County to include that of downtown Silver
6 Spring as well as the early attempts at revitalization to
7 becoming (indiscernible) community.

8 To say I'm not excited for the development of the
9 new townhouses to my neighborhood, in which I built my own
10 home and is my current residence in which I love and made to
11 look old to seamlessly add to the character that already
12 exists in the community, would be an understatement. My
13 labor of love and which I continue to improve I believe is
14 reflected in the workmanship of the EYA family to include
15 projects such as Park Potomac, Park Seminary and neighbor
16 Cameron Hill.

17 Am I afraid of change, a direct representation of
18 the Y Generation? Absolutely not. My mother's family, whom
19 were also in the construction business since the '60s, later
20 becoming one of the successful contractors building through
21 the rise of Hilton Head, South Carolina who is now, you
22 know, retired and has passed on actually since then and that
23 was in the early '90s so no direct affiliation in any way,
24 so a highly sought after community for retirees as well as
25 family which I believe downtown Silver Spring, in

1 comparison, is going through its evolution finale of more of
2 an urbanization approach for which is already a great
3 neighborhood of mixed architectural styles, both old and
4 new, which I adore.

5 With this addition of townhouses in place of the
6 school with students who transplant into the area from
7 elsewhere, not our immediate community, I believe will
8 result in less direct impact. To potentially have more
9 neighbors to wave to and chat with I would say would be a
10 good direction towards a more residential community in which
11 I have grown to love. The birds will still chirp as they
12 do. The streets in which we walk to our nearby town center
13 and our parks, we'll still have that option and hopefully,
14 in the future, as a result of the development to include
15 condos across the street, our shops in the town center will
16 continue to improve as they have with the new residents of
17 the future, our new neighbors.

18 For disclosure, I am associate broker and realtor,
19 resident/owner and lover of the community and evolution of
20 downtown Silver Spring in its entirety to include my
21 neighborhood. It is time. Robert Bacon, resident/owner,
22 504 Dale Drive.

23 Q Thank you, Mr. Bacon.

24 MR. HARRIS: I have nothing further.

25 MS. ROBESON: Mr. Brown?

1 CROSS-EXAMINATION BY COUNSEL FOR OPPOSITION

2 BY MR. BROWN:

3 Q Mr. Bacon, is your residence on this map with
4 Springvale Drive?

5 MS. ROBESON: Can you say the exhibit number?

6 THE WITNESS: I am in the immediate neighborhood
7 if that's your question.

8 MR. BROWN: This is Exhibit 124.

9 THE WITNESS: Do you need me to show you or --

10 BY MR. BROWN:

11 Q Yes. If you would, please.

12 A I'm right off of Woodside Parkway. Is this
13 Woodside?

14 Q Here's Dale.

15 A Yeah. You're showing all the way up there but
16 actually, my house cuts right here so I am right -- Woodside
17 Parkway. My house is the second house down on Dale touching
18 Woodside Parkway.

19 Q Very good. Do you like the project, Mr. Bacon?

20 A I do. Having built my own house from the ground
21 up, I am visionary and do see this project as being a great
22 contribution to the neighborhood, of mixed styles which
23 includes me.

24 Q Is there anything about the project that wouldn't
25 be just as good if not better if there were half as many

1 townhouse units in it?

2 A That, I cannot disagree with but I have not seen a
3 presentation that shows me, you know, that being an
4 alternative.

5 Q Fair enough. Thank you very much.

6 MR. BROWN: I have no further questions.

7 THE WITNESS: That or single-family houses or
8 whatever other options exist.

9 MS. ROBESON: Ms. Volk?

10 MS. VOLK: Song Volk, Springvale Road.

11 MS. ROBESON: You don't have to keep saying your
12 address.

13 MS. VOLK: All right. Thanks.

14 CROSS-EXAMINATION BY MS. VOLK

15 BY MS. VOLK:

16 Q I just have two questions for you.

17 A Sure.

18 Q Are you aware of the master plan?

19 A It has been brought to my attention. I have
20 attended all the hearings up to this point.

21 Q Have you read the master plan?

22 A Apart from the actual presentations in the first,
23 which was there, I was there from the beginning and the
24 start of the first hearing so of all of what would have been
25 presented there, yes.

1 Q Oh, sorry. Third question. Are you aware of the
2 master plan's goal to stabilize edge communities around the
3 CBD?

4 A Yes. I am also aware of downtown Silver Spring's
5 goal to develop the entire area and, you know, people were
6 propose, proposing the Purple Line, they were opposing that.
7 That was going to come up to my doorstep, you know, since
8 it was going to be on Wayne as I do touch there as well. So
9 it's like saying we don't want anything to come ever to
10 downtown Silver Spring, and we're in a downtown area versus
11 the suburbs in which I grew up.

12 Springbrook School District is actually the
13 suburbs of Silver Spring where you do get the land and there
14 is no bustling or whatever other alternatives you could, you
15 know, have versus living in a downtown, being close to all
16 those things. It's almost like you're anticipating the
17 difference of Silver Spring. It's a very large area so you
18 can go, you know, from one end. It's like the second
19 largest city in Montgomery County so easily, you would have
20 the option, you know, if you were opposed to not having the
21 hustle and bustle, just going up the street a little bit or
22 just a little bit away from.

23 Q Are you aware that the master plan envisions the
24 future of Silver Spring from 20 years on to the next master
25 plan?

1 A Well, actually, I'm going to add something else
2 in. Actually, I was actually in middle school when the City
3 Place was opening up and it was supposed to be this big
4 amusement park wrapping around downtown Silver Spring so for
5 me, having grown up in the evolution of change and this and
6 that and all the things that it would have been, townhouses
7 to me versus an amusement park wrapping around, which back
8 then sounded even lovely, I think is far less aggressive in
9 what has now become revised plans that, how they're now
10 changing downtown Silver Spring as a, as a whole.

11 Q I remember you said that Silver Spring is very big
12 and so if people wanted more hustle and bustle, they could
13 go --

14 A Well, I'm not saying it in that way. I'm saying
15 that I grew, I'm not saying in that way. I grew up in the
16 suburbs of Silver Spring so I'm saying I know that there are
17 options within the County where if you were intentionally
18 coming to a downtown area with high-rises surrounding you, a
19 Metro next door, you know, they were building -- for some of
20 the people who have given the testimony that 10 years ago is
21 when you first moved to the area, well, 10 years ago is when
22 the Whole Foods came to the area and all that stuff they
23 were building then.

24 So to say that you would have moved to a downtown
25 area knowing that they would never build the area up would

1 be an understatement if you knew the history of the area and
2 the Hecht's building having now declined, with City Place
3 and all these things, of course at some point, the
4 revitalization is termed that way because they're putting
5 back what was already there. It used to be, downtown Silver
6 Spring used to be a hustle and bustle shopping district area
7 with lots of cars, lots of people, so what is there now is
8 more of a walking scenario but all they're doing is putting
9 back what was already there.

10 So if we're adding just more residents to support
11 what should be, you know, I would say high retail, you know,
12 it shouldn't all be in Chevy Chase or Bethesda, X, Y, Z
13 unless that is not the direction you see us going in. We
14 can't do it without more people so we have, you know, we are
15 a County land. I believe there was a (indiscernible) land
16 mock, you know, so they can't, you know, there's not a land,
17 a lot of land available and for somebody who said something
18 about all the tear-downs in Bethesda, the reason they're
19 tearing down the houses, there is no land. Where are they
20 going to build the new communities? You had to tear down a
21 house in order to build one because that's the only way
22 you're going to get a new house because all of the houses
23 were built in the older years. So, you know.

24 Q Do you believe that Chelsea School site, is that,
25 for you, in the CBD?

1 A Now, I'm not an expert in that but based on the
2 previous hearing, and I was there for the whole time, they
3 were saying that it was.

4 Q That that school is in the CBD?

5 A Yes.

6 Q All right. Thank you.

7 MS. ROBESON: Mr. Harris?

8 REDIRECT EXAMINATION

9 BY MR. HARRIS:

10 Q Does your support for this project, is it based on
11 whether this site is in the CBD or not? In other words,
12 would you support it if it turned out it's not in the CBD?

13 A Of course. I live in the neighborhood. I built
14 my own house from the ground up. It's made to look old. I
15 put it there because it's what I like, it's what I wanted.
16 I wanted new. Could someone in my age factor, as we are
17 going to be the people buying the, your house or the next
18 house or whatever, we want this product, we want to keep
19 building, we want someplace that we can buy in downtown
20 Silver Spring. What if everybody who lives in the
21 neighborhood decides we love it so much we're never going to
22 leave ever? Where do we live? Are we just going to rent
23 for the rest of our lives if we want to live in downtown
24 Silver Spring because I believe it's just an option, you
25 know.

1 That's life. Life has options. Everybody is not
2 going to hoo-ha and hooray for all of those options in life
3 but this, in comparison to an amusement park and what used
4 to be a bustling Hecht's and a JC Penny's and all these
5 things, and now we've become more of an art district and
6 more of a residential.

7 To a school that I would have even stood on the
8 fence and said well, maybe they have a point if it was
9 serving our community in the sense that our, whoever's
10 living there with their children were taking their children
11 to that particular school, I would say a direct impact, I
12 sympathize with how this is going to change, we moved here
13 knowing that our child could attend this prestigious school
14 and it's not the case. They're being transplanted from
15 other areas which with a new school, we don't know. That's
16 400, potentially 400 more unknowns versus you get someone
17 into the neighborhood who loves and cherish their home just
18 as we do and it's 76 more loving people, then of course,
19 everything will still be the same. It will just, there will
20 just be more options for us, you know.

21 The retailers will come and say okay, it's time to
22 put back what used to be there because the -- the average
23 income is actually low for downtown Silver Spring because
24 there is so much rent. There is a high number of renters
25 versus if you go out to the Silver Spring suburbs. In

1 20905, the average income is like \$130-something,000 a year
2 just because it's more owners and of course, they have a
3 number of different options but their proximity to Rockville
4 doesn't allow them to build there.

5 MS. ROBESON: Right.

6 THE WITNESS: Off course, but you know.

7 MR. HARRIS: Okay. Well, thank you very much for
8 coming today.

9 THE WITNESS: Thank you.

10 MR. HARRIS: Appreciate it.

11 MS. ROBESON: Mr. Brown, anymore questions? Okay.

12 MR. BROWN: Nothing further.

13 MS. ROBESON: You're excused.

14 THE WITNESS: Thank you.

15 MS. ROBESON: Your next witness?

16 MR. HARRIS: Leslie Hansley. Yes.

17 MS. ROBESON: Ms. Hansley, please raise your right
18 hand.

19 (Witness sworn.)

20 MS. ROBESON: Okay.

21 DIRECT EXAMINATION

22 BY MR. HARRIS:

23 Q Ms. Hansley, as you've heard me tell the other
24 folks, thank you very much for coming. The floor is yours
25 to say what you came to say.

1 A To stay on point, I'm going to read from my
2 testimony. For the last 20 years, my husband and I have
3 lived at 607 Ellsworth Drive and we're about six homes down
4 from the Chelsea School. I have been an active member of
5 our neighborhood association, SOECA, for a little more than
6 15 years. Also, I was part of the steering committee to
7 redevelop downtown Silver Spring.

8 Never in my wildest dreams could I have imagined
9 that Silver Spring would become such a vibrant, eclectic,
10 desirable place to live. I love the convenience of the
11 area, the mix of the old, new and older homes, mature trees,
12 diversity of residents and friendly neighborhoods. Sorry,
13 friendly neighbors. Also, the house that I live in is not
14 community. That was built 20 years ago from new and there
15 was also a lot of anxiety and controversy about these
16 single-family homes.

17 I strongly support EYA's proposal to build
18 townhomes on Chelsea Court. I have friends who live in EYA
19 communities and they are very happy with their townhomes.
20 I'm very impressed with the architecture, the upgraded
21 finishes and there's no one better to build townhomes in an
22 urban setting than EYA. I'm also very impressed with EYA's
23 willingness to listen to our concerns and incorporate our
24 recommended changes to better blend the townhomes into the
25 community and also, they have a proven track record of

1 delivering high-quality townhomes on schedule. Several of
2 the neighbors who are in opponents have told me that they're
3 worried about developers coming in and not finishing the
4 project. EYA builds good product and on time.

5 I think that there is a perception that these
6 townhomes are starter homes and as such, may bring down the
7 property values in our neighborhood. These homes will cost
8 more than a lot of the single-family homes in our
9 neighborhood and the people would buy them are young
10 professionals like I have a nephew who is very interested in
11 moving there. They want to live in a larger home with all
12 the upgraded finishes but not have the upkeep of a house.
13 This is the Generation Y, the 30-year-old professionals.

14 And there's also the empty-nesters like my husband
15 and a few of my neighbors who are looking forward to
16 downsizing from a single home into a smaller, modern,
17 contemporary home while we remain active in a diverse,
18 eclectic, middle class urban community. None of us want to
19 go to a retirement or over age 55 home at all. We want to
20 stay in a very vibrant area.

21 I feel very comfortable that these townhomes and
22 their residents will blend harmoniously into our existing
23 neighborhood and be an asset to our community and I look
24 forward to living at Chelsea Court. Hopefully, it will come
25 soon. Once again, I support the project and I hope that it

1 will come soon.

2 MR. HARRIS: Thank you.

3 MS. ROBESON: Thank you.

4 MR. HARRIS: I have no further questions.

5 MS. ROBESON: Mr. Brown?

6 MR. BROWN: No questions.

7 MR. HARRIS: Okay. Ms. Hansley, thank you again
8 very much for coming and taking the time today. We have
9 Mark Stires I think is our next witness.

10 MS. ROBESON: Please raise your right hand.

11 (Witness sworn.)

12 MS. ROBESON: Okay.

13 MR. HARRIS: Excuse me one second.

14 (Discussion off the record.)

15 DIRECT EXAMINATION

16 BY MR. HARRIS:

17 Q Mr. Stires, would you tell us your business and
18 your business address?

19 A Yes. Madam Hearing Examiner, my name is Mark
20 Stanley Stires. I'm with Bowman Consulting at 2121
21 Eisenhower Avenue, Alexandria, Virginia. I'm a principal in
22 the firm and the branch manager.

23 Q And what is your educational background?

24 A I graduated from Lehigh University in 1984 with a
25 BS in civil engineering.

1 Q And are you registered as an engineer?

2 A Yes. I'm registered in Maryland and three other
3 local jurisdictions.

4 MR. HARRIS: I tender him as an expert as a civil
5 engineer but if Mr. Brown wants additional information, I'm
6 happy to address that.

7 MR. BROWN: No problem.

8 MS. ROBESON: Okay. He's qualified as an expert
9 in civil engineering.

10 MR. HARRIS: Thank you.

11 BY MR. HARRIS:

12 Q Did Bowman Consulting provide surveying, civil
13 engineering, landscape architecture and arborist services to
14 EYA as part of this?

15 A Yes.

16 Q And can you tell us whether you're familiar with
17 the site and to what degree you have inspected it?

18 A I'm familiar with the site. I have inspected it.

19 The site is located in downtown Silver Spring within an
20 existing subdivision. The approximately five acre site is
21 bounded by the following streets, Pershing to the east,
22 Springvale to the north, Ellsworth to the west, Cedar Street
23 is located to the south approximately 120 feet.

24 Q And what's on the site today?

25 A The existing site consists of an existing historic

1 house and the existing school. Access is provided off of
2 three surrounding streets. The site generally drains to the
3 southeast corner in a, to the south, to the northwest corner
4 of the project from the southeast corner. Topography varies
5 by about 40 feet. The existing site is about 25 percent
6 impervious which is 1.22 acres.

7 Q And I don't see the schematic development plan
8 here. Actually, let me --

9 MR. HARRIS: Thank you.

10 (Discussion off the record.)

11

12 BY MR. HARRIS:

13 Q We've put up there Exhibit 114 that shows the
14 Chelsea Court project. Can you describe what this proposed
15 plan shows?

16 A The proposed site shall limit access to only two
17 streets, Pershing Drive and Ellsworth Drive, no access to
18 Springvale Road. Improvements to Springvale Road are
19 anticipated based on DPW&T requirements which includes
20 curbing and storm drainage. Currently, Springvale has no
21 curbing or storm drainage within it except at the
22 intersection at Ellsworth Drive. The proposed improvements,
23 which include 76 townhome units, retaining walls, roadways,
24 et cetera, shall include the necessary utility improvements
25 such as water, sanitary, sewer, storm drainage, storm water

1 management as needed. A new private street, Private Street
2 A, will be constructed running east-west through the site
3 and shall be, and shall have proposed intersections at
4 Pershing and Ellsworth Drive. We anticipate that the street
5 grade will not exceed eight percent.

6 Q Have you looked at the storm water management
7 concept for this and what have you proposed in terms of
8 storm water?

9 A Yes. The proposed site shall be 56 percent
10 impervious, 2.71 acres. Storm water management design
11 quality and quantity shall be in accordance with all County
12 and State requirements including MDE 2008 Storm Water
13 Management Ordinance. The proposed storm water management
14 concept plan proposes to treat required environmental site
15 design ESDV volumes with different practices which include
16 dry wells, landscape infiltration areas and submerged gravel
17 wetlands.

18 Q Does the site have any storm water management
19 facilities today and if not, how will this relate to, or how
20 will the proposed development relate to the existing
21 conditions?

22 A The existing site is not served by a storm water
23 management facility to the best of our knowledge.
24 Additionally, the storm drainage systems that are in place
25 are inadequate, were nonexistent such as no curbing, storm

1 draining on Springvale Road. The proposed improvements
2 especially relevant to storm drainage and storm water
3 management shall provide for safe and adequate conveyance of
4 storm water runoff and bring the site into compliance with
5 current regulation.

6 Q In your professional opinion, is the proposed
7 storm water management adequate to serve the site and can
8 you explain how it will work?

9 A Yes. It's my professional opinion that the
10 proposed storm water management facilities and proposed
11 storm drainage systems will be a significant improvement
12 over the current existing conditions. These facilities will
13 provide safe conveyance of path for the storm water, slow
14 down the velocity of the runoff and reduce the quantity of
15 the runoff.

16 Q And will they meet, will the facilities meet the
17 anticipated code or the existing code requirements that the
18 site will be subject to?

19 A Yes, they will.

20 Q Are water, sewer, gas and other utilities
21 available to serve the site?

22 A Yes, they are.

23 Q And are there capacity, or is there capacity to
24 serve the site from those facilities?

25 A Yes. There is capacity.

1 Q And are those utilities in the immediate area?

2 A Yes. There's existing sanitary, sewer and
3 existing water lines surrounding the project, and we've been
4 in discussions with WSSC regarding those.

5 Q So is gas, electric, power also available and
6 adequate for the property?

7 A Yes. Yes. The dry utilities will be available
8 surrounding the site as well.

9 Q Let's see. Did you prepare a preliminary forest
10 conservation plan for the site?

11 A Yes, we did.

12 Q And has that plan been reviewed by Park and
13 Planning staff?

14 A Yes, it has.

15 Q And based on their comments, do you have a belief
16 as to whether that preliminary forest conservation plan is
17 approvable at the time of preliminary plan or site plan?

18 A Yes. Based on the, Park and Planning's staff
19 review, they deemed the preliminary forest conservation plan
20 approvable at the appropriate time.

21 Q Okay.

22 MR. HARRIS: I have no further questions.

23 MS. ROBESON: Okay. Mr. Brown?

24 CROSS-EXAMINATION BY COUNSEL FOR OPPOSITION

25 BY MR. BROWN:

1 Q Mr. Stires is it?

2 A Stires.

3 Q Stires?

4 A Like tires with an "S" in the front.

5 Q Mr. Stires, I hope that you can speak
6 knowledgeably about all of the exhibits furnished by Bowman
7 Consulting in this application. Is that fair? Is that
8 correct?

9 A Yes, it is. They were, all the exhibits and the
10 information were prepared under my direction by my staff, so
11 I will attempt to answer your questions as much as possible.

12 Q All right. I'd like to start with this one, the
13 greenspace exhibit. Actually, that's not the one I want. I
14 have the small version of it here. Do you have one with the
15 calculations on it?

16 A Yeah. We have a, we have a large one, yeah. This
17 does not have an exhibit number.

18 Q Oh, that's it. Yes.

19 A It might need an exhibit number.

20 MR. HARRIS: Yes.

21 BY MR. BROWN:

22 Q Do you have the --

23 MR. HARRIS: One second.

24 MS. ROBESON: Wait.

25 MR. HARRIS: Is that in the exhibits?

1 MR. BROWN: It's --

2 MR. HARRIS: Do you remember?

3 MR. BROWN: I thought it was 134A but I could be

4 mistaken.

5 THE WITNESS: And that's revised as of June 1st.

6 MR. HARRIS: Alternate view of green area plan, so

7 it does say -- if you can find that.

8 THE WITNESS: There's a previous one that didn't

9 have the --

10 MR. HARRIS: Yes, yes.

11 THE WITNESS: -- green area calculations on it.

12 MR. BROWN: Maybe it needs a number.

13 THE WITNESS: I think it does.

14 MS. ROBESON: What's the date of that one?

15 THE WITNESS: It's revised June 1st, 2011.

16 MS. ROBESON: Let's give this a number.

17 MR. HARRIS: Is that what yours is, Dave, the

18 June?

19 MR. BROWN: Mine has, yes.

20 MR. HARRIS: This is --

21 MR. BROWN: Yes. Mine has --

22 MR. HARRIS: Yes, June. Yes. That's the same one

23 I think but I don't remember that was an exhibit. Let's

24 mark it as an --

25 MS. ROBESON: Is it marked?

1 MR. HARRIS: We don't see one that's marked, Madam
2 Examiner.

3 MS. ROBESON: Is yours marked, Mr. Brown?

4 MR. BROWN: I thought it was 134A but I obviously
5 marked the wrong one.

6 MS. ROBESON: Well, let's give it an independent
7 number.

8 MR. BROWN: I think we're at 171.

9 MS. ROBESON: Yes. So this is greenspace with
10 area calculations?

11 MR. BROWN: Right.

12 MS. ROBESON: Okay.

13 (Exhibit No. 171 was marked for
14 identification.)

15 BY MR. BROWN:

16 Q Mr. Myers, do you have the subsidiary calculations
17 that add up to these totals?

18 A The calculations that I have are the ones that are
19 on the exhibit.

20 Q That's all you have?

21 A That's all I have.

22 Q I'd like you to look at Exhibit 23A and your, one
23 of the exhibits that you prepared and included in that
24 exhibit.

25 MR. HARRIS: I didn't see that one here.

1 MR. BROWN: It's in your, it's in your study.

2 MR. HARRIS: The planning report?

3 MR. BROWN: The planning report. I'm not sure
4 which attachment it is.

5 MR. HARRIS: Hold on. Bear with me. I left that
6 over here.

7 MR. BROWN: That's it.

8 MR. HARRIS: February 2011?

9 MR. BROWN: Yes.

10 MR. HARRIS: Okay.

11 BY MR. BROWN:

12 Q And comparing this with Exhibit 171, Mr. Myers, to
13 me, it looks like the same thing except that the colors are
14 a little different and the subsidiary calculations are on
15 the Exhibit 23A attachment but not on the, on Exhibit 171.
16 Do you agree with that?

17 A Yes. They are, they're two different exhibits.

18 Q The one difference that I've noticed between them,
19 and maybe you can enlighten me on this, is that the open
20 space exhibit does not include in the calculations any of
21 the sidewalks whereas the green area exhibit does include
22 the sidewalks. Does that account for the difference between
23 the 2.09 acres on this exhibit and the 2.4 acres on the
24 greenspace exhibit?

25 MS. ROBESON: You mean the difference between

1 Exhibit 23A and 171?

2 MR. BROWN: Yes.

3 MS. ROBESON: Yes.

4 BY MR. BROWN:

5 Q The 91,369 I believe is 2.09 acres.

6 MS. ROBESON: Okay. I see where you are.

7 THE WITNESS: Just for the record, Mr. Brown, my
8 last name is Stires.

9 BY MR. BROWN:

10 Q Stires, I'm sorry.

11 A Stires. That's okay. The open space exhibit
12 you're referring to is dated February 2011.

13 MS. ROBESON: That's 23A.

14 THE WITNESS: Exhibit 23A, and that one is, what
15 it appears to be is a different layout and again, you know,
16 it's showing parking on both sides of Private Street A
17 whereas the current layout only has parking on one side, and
18 there are these, the nubs. So I really can't answer as far
19 as what, why all the differences and did we exclude, you
20 know, the actual sidewalk from our calculation on Exhibit
21 23A. It's a different layout.

22 BY MR. BROWN:

23 Q All right. Is it fair to say that somewhere along
24 the line, Exhibit 171 totaled up some subsidiary
25 calculations to reach these numbers that are in the box the

1 way Exhibit 23A did?

2 A Well, the, the reason for the green area
3 calculations on Exhibit 171 was in response to I believe the
4 first, the first hearing session where it was requested that
5 we provide some calculations. So we developed those
6 calculations consistent with how we calculate them typically
7 and it added up as we have shown it.

8 Q Well, how do you do it?

9 A Well, typically, what we'll do is we'll typically
10 calculate it using CAD and in CAD, we'll develop different
11 shapes based on the geometry of the CAD files and calculate
12 those areas according to that geometry.

13 Q I just find it extraordinary that to within a
14 hundredth of an acre, you got the exact same number that you
15 came up with on your original plans way back when a year
16 ago. I'd just like to see the work, the work-up on these
17 numbers. Do you, can you provide us that documentation?

18 A I can, I can provide you files showing the
19 different shapes that we calculate and how all the shapes
20 add up, but that would take some time to do.

21 Q Let me just go back so that you understand what
22 I'm talking about. This is Exhibit 30A and this says 2.40
23 acres of recreational open space, and I'm just wondering
24 whether or not there's a coincidence between these numbers
25 or whether they were calculated, the open space calculation

1 on Exhibit 30A is the same as the numbers that came out
2 here.

3 A The, I believe our current calculations are
4 accurate and they're consistent with the schematic
5 development plan.

6 Q Okay. Well, I'd like to see the calculations for
7 both.

8 A Okay.

9 Q I don't know if they're any different. Just a
10 couple more things. In preparing Exhibit 30A and your other
11 exhibits, did you make reference to plat 22270? Do you have
12 a copy of that? It's Exhibit 65 in our record.

13 MR. HARRIS: What is that plan? Oh, that's a
14 plat. I don't know if I have that here.

15 BY MR. BROWN:

16 Q Your Exhibit 30A makes explicit reference to this
17 plat, doesn't it under site data?

18 A Under, under site data, we reference plat 22270.

19 Q Right. And I've got a couple of questions for you
20 about that plat. It's Exhibit 65 in our record.

21 A Okay. I would need a copy of that.

22 MR. HARRIS: I don't have a copy with me.

23 BY MR. BROWN:

24 Q You're welcome to look at mine.

25 MR. HARRIS: Okay. Do you need to look at this as

1 well?

2 MR. BROWN: No, no. I've got --

3 MR. HARRIS: Okay.

4 THE WITNESS: Okay.

5 MR. BROWN: I've got more I can work with.

6 BY MR. BROWN:

7 Q I have a couple of questions about this plat.

8 A Can you read the lettering?

9 MR. HARRIS: It's better than mine. Ms. Robeson,
10 do you need a copy?

11 MR. BROWN: I'm going to give you the enlarged
12 version.

13 MS. ROBESON: I'm not sure yet. Did you say
14 Exhibit 60?

15 MR. BROWN: 65.

16 MR. HARRIS: 65 he has written down here. Thank
17 you. Yes. These are blowups of the notes.

18 BY MR. BROWN:

19 Q These are, I'm going to give you the enlarged
20 versions of the writing. They're Exhibits 141 and 142.

21 MS. ROBESON: Oh, yes. I have it.

22 BY MR. BROWN:

23 Q Why don't you let me have the smaller one back so
24 I can look along with you. On Exhibit 141, note no. 10, it
25 says that the, these are the owners of the property when it

1 was subdivided, that they were going to preserve
2 approximately one acre around the house in its historical
3 environmental setting. Do you see that?

4 A Yes, I do.

5 Q Do you know what acreage you have preserved in
6 your plans for the environmental setting for the historic
7 house?

8 A It's not, it's not shown on the plan but I know
9 it's in excess of 37,000 square feet.

10 Q That's part of why I want to see your subsidiary
11 calculations, to see how you've assigned that, all right?

12 A Okay.

13 Q Now, looking at the other piece of paper, Exhibit
14 142, would you read aloud the last sentence on the first
15 half of the certificate?

16 A Okay.

17 Q Where it says further.

18 A Sure. I'm reading from the owner's certificate
19 from the plat. "Further, we establish the environmental
20 setting easement shown hereon with terms and conditions to
21 be set forth in a document to be recorded hereafter."

22 Q Mr. Stires, I've looked high and low for this
23 recorded easement and I have been unable to find it. Did
24 Bowman Consulting find it in the course of its work on this
25 project?

1 A I am, I am not aware.

2 Q Do you know whether they looked?

3 A We were provided an updated title report and we
4 reviewed that, and I am not certain whether we found it or
5 not.

6 Q All right. If you did find it, could you please
7 provide it?

8 A Sure.

9 Q All right. Thank you.

10 MR. BROWN: I have no further questions.

11 MS. ROBESON: All right. Any redirect, Mr.
12 Harris?

13 REDIRECT EXAMINATION

14 BY MR. HARRIS:

15 Q With respect to the calculations of greenspace
16 there, I'm not sure I heard you. Did you say that you have
17 checked those via computer and that you believe those
18 calculations are correct?

19 A Yes.

20 Q Okay.

21 MR. HARRIS: That's all.

22 MS. ROBESON: All right. Any recross?

23 MR. BROWN: That's it.

24 MS. ROBESON: Okay. He --

25 MR. HARRIS: Okay.

1 MS. ROBESON: He can be excused.

2 MR. HARRIS: I think that's all we have for today.

3 MS. ROBESON: Okay.

4 MR. HARRIS: We had talked about last time a
5 couple of our civic supporting witnesses could not be here
6 today. They will be here on Thursday and then, but I think
7 we, you know, anticipated hearing from some of the
8 opposition witnesses sort of in the meantime.

9 MS. ROBESON: That's fine. That's fine. We're
10 going to take a 45 minute lunch, well, we'll come back at --

11 MR. GURWITZ: Excuse me, Ms. Robeson.

12 MS. ROBESON: Yes.

13 MR. GURWITZ: Sorry to interrupt. May I request
14 some additional time because I'm going to need to set up a
15 projector and a laptop, so just a few extra minutes on top
16 of what you were about to offer us for lunch.

17 MS. ROBESON: How about come back at, in an hour,
18 all right? Do you have a hard copy of your testimony, or of
19 your, whatever your slide presentation?

20 MR. GURWITZ: I do have hard copies, yes.

21 MS. ROBESON: Okay. All right.

22 MR. GURWITZ: And also on CD.

23 MS. ROBESON: Okay. With that, we're adjourned.

24 Thank you.

25 (Whereupon, at 1:38 p.m., a luncheon recess was

1 taken.)

2 MS. ROBESON: Mr. Brown, I believe that this is
3 your witness.

4 MR. BROWN: Just a couple of housekeeping matters.
5 Did you want to give an exhibit number to this letter that
6 we got today from Mr. DiGrazio (phonetic sp.)?

7 MS. ROBESON: Oh, the one that came in during the
8 hearing?

9 MR. HARRIS: Yes.

10 MS. ROBESON: June 24th, 2011 dated?

11 MR. BROWN: Right.

12 MS. ROBESON: Yes. We will give it -- let's see
13 here. 172.

14 MR. BROWN: Okay.

15 MR. HARRIS: I think so.

16 (Exhibit No. 172 was marked for
17 identification.)

18 MS. ROBESON: Okay. All right.

19 MR. BROWN: Mr. Gurwitz is going to be first but
20 he has some additional exhibits to provide you with.

21 MR. GURWITZ: Ms. Robeson, I'd like to introduce
22 the following exhibits into the record.

23 MS. ROBESON: Wait. Hold on one second. Did you
24 -- okay.

25 MR. GURWITZ: I'm sorry?

1 MS. ROBESON: Go ahead.

2 MR. GURWITZ: Okay. What I have here, per your
3 request, I went to the Montgomery County Government website
4 and I copied the Silver Spring CBD Sector Plan and all of
5 its attachments.

6 MS. ROBESON: Okay.

7 MR. GURWITZ: So but there were some that were
8 just not available on the internet. I don't know why. They
9 kept giving me the wrong document.

10 MS. ROBESON: So this is --

11 MR. GURWITZ: This is the Silver Spring CBD Sector
12 Plan.

13 MS. ROBESON: Okay. So this -- do you have an
14 objection, Mr. Harris?

15 MR. HARRIS: No. Assuming it's an accurate copy
16 of it.

17 MR. GURWITZ: I did my best.

18 MR. HARRIS: No. I'm sure you did.

19 MR. GURWITZ: You also --

20 MS. ROBESON: The only thing is I can't mark it.

21 MR. GURWITZ: You can mark it right on the disc. I
22 can give you a Sharpie.

23 MS. ROBESON: That's what I'm going -- do you have
24 a Sharpie?

25 MR. GURWITZ: I do. One second, please.

1 MR. HARRIS: This, Michael, is this the latest CBD
2 Sector Plan because that's been changed so many times?

3 MR. GURWITZ: I will tell you, Bob, that I did, I
4 took this off the web last week.

5 MR. HARRIS: Okay. You don't remember the date of
6 the plan?

7 MR. GURWITZ: I'm afraid I don't.

8 MR. HARRIS: Okay.

9 MR. GURWITZ: It should say though, presumably, on
10 the front page.

11 MR. HARRIS: Okay.

12 MS. ROBESON: Okay. So the Silver Spring CBD
13 Sector Plan will be 173.

14 (Exhibit No. 173 was marked for
15 identification and received into
16 evidence.)

17 MS. ROBESON: All right.

18 MR. GURWITZ: You also asked for the purple line
19 functional plan.

20 MS. ROBESON: Yes.

21 MR. GURWITZ: And I did the same thing. I went to
22 the government website and copied it.

23 MS. ROBESON: Okay. And this will be -- Mr.
24 Harris, do you have an objection?

25 MR. HARRIS: No.

1 MS. ROBESON: So this will be 174, and that is --
2 all right.

3 (Exhibit No. 174 was marked for
4 identification and received into
5 evidence.)

6 MR. GURWITZ: Lastly, I'm going to show a brief
7 photo essay today which I prepared about one month ago, and
8 these are copies of the CD which I'll be using to show the
9 photo essay.

10 MS. ROBESON: Okay. Do you want to reserve?

11 MR. HARRIS: This one, I would prefer to watch it
12 first and then, before it's admitted. I certainly have no
13 problem with it --

14 MS. ROBESON: So I'm going to just --

15 MR. HARRIS: -- being identified as Exhibit 175.

16 MS. ROBESON: Yes. I'll just mark it 175.

17 (Exhibit No. 175 was marked for
18 identification.)

19 MS. ROBESON: Okay.

20 MR. GURWITZ: I also made hard copies of the
21 photos. I was expecting to testify on May 26th so that's
22 why it says submitted on May 26th.

23 MS. ROBESON: Okay.

24 MR. GURWITZ: I apologize for that.

25 MS. ROBESON: So this will be 176. We're just

1 marking for identification now.

2 MR. HARRIS: Yes. Is this the same as the photos
3 on the --

4 MR. GURWITZ: It is. It's exactly the same.

5 MR. HARRIS: Okay.

6 (Exhibit No. 176 was marked for
7 identification.)

8 MR. GURWITZ: Lastly, I have a blowup of an aerial
9 shot of the CBD and Seven Oaks-Evanswood neighborhood. I
10 was just going to use that to illustrate some points.

11 MS. ROBESON: Okay. Have you shown that to Mr.
12 Harris?

13 MR. BROWN: We have a small version of that in the
14 record, don't we?

15 MR. GURWITZ: We should have. You should have --

16 MR. HARRIS: That's fine. I have no problem.

17 MR. GURWITZ: Do you need to mark this? Should we
18 mark this on the corner?

19 MS. ROBESON: You should mark it on the corner.
20 I'll give you, I'll return that to you.

21 MR. GURWITZ: And this would be Exhibit Number?

22 MR. BROWN: I think that's 151. Let me check.
23 No.

24 MS. ROBESON: No. I think, I'm looking at 151 and
25 I think it's a different photo so this will be 177. And

1 what is that, Mr. Gurwitz?

2 MR. GURWITZ: This is an aerial view of the CBD --

3 MS. ROBESON: Okay.

4 MR. GURWITZ: -- Chelsea School site and part of
5 the Seven Oaks-Evanswood neighborhood.

6 MS. ROBESON: Okay.

7 (Exhibit No. 177 was marked for
8 identification and received into
9 evidence.)

10 MS. ROBESON: All right. With that, you can
11 continue and Mr. Harris will reserve the right to object to
12 the slide presentation.

13 MR. BROWN: Do you want to swear him in?

14 MS. ROBESON: Yes.

15 MR. GURWITZ: That's what I was raising my hand
16 for before.

17 MS. ROBESON: Oh.

18 MR. GURWITZ: That's all. Sorry.

19 MS. ROBESON: Thank you. I didn't realize. Okay.

20 (Witness sworn.)

21 MS. ROBESON: All right.

22 DIRECT EXAMINATION

23 BY MR. BROWN:

24 Q Would you tell us your name and address, please?

25 A My name is Michael Gurwitz. I live at 8607

1 Springvale Road.

2 Q And how long have you lived there?

3 A I have lived there for nearly 12 years.

4 Q And what is the relationship of that address to
5 the Chelsea School site?

6 A My house is directly across the street from the
7 Chelsea School property.

8 Q Mr. Gurwitz, what is your occupation?

9 A I'm a Federal attorney.

10 Q Federal attorney. What does that mean?

11 A I'm a lawyer for U.S., the U.S. Department of
12 Agriculture.

13 Q Okay. Do you have a sideline activity of
14 community involvement?

15 A I have been active in the SOECA Citizens
16 Association for, I'd say, roughly 10 years, and I've become
17 much more active in the last year. I am also a volunteer
18 community emergency response, Community Emergency Response
19 Team member which means that if there's some kind of natural
20 or manmade disaster and the first responders are
21 overwhelmed, they will call volunteers like myself.

22 Q Are you familiar with the master plan for north
23 and west Silver Spring?

24 A Yes, I am.

25 Q Are you familiar with the issues that have been

1 discussed in this case about whether or not this plan is in
2 compliance, this proposed re-zoning is in compliance with
3 that plan?

4 A I am.

5 Q Have you read the recommendation from the Planning
6 Board on that topic?

7 A I have read it.

8 Q That recommendation has a majority opinion and a
9 dissenting opinion. Are you familiar with both of those?

10 A I have read them both. It has been some time
11 since I have read them.

12 Q My question for you is kind of where do you come
13 out with respect to those two, those views in terms of your
14 particular view on the compliance of this plan with the
15 master plan.

16 A My opinion is I agree with the dissenting opinion.
17 I believe that the majority opinion is in error.

18 Q And why is that?

19 A I do not believe that the majority opinion
20 interpreted the master plan correctly, nor do I believe that
21 the majority opinion, opinions, the recommendation that this
22 proposal meets the requirements of the (indiscernible)
23 Zoning Ordinance, I do not believe that they were correct in
24 that determination.

25 Q With regard to the purpose clause in the RT zone,

1 are you familiar with the intent and purpose provisions of
2 that zone?

3 A I am.

4 Q And in particular, subsections A and B of that.
5 What is your understanding of those two subsections?

6 A My understanding of these two subsections is that
7 they provide the various options under which a developer
8 such as EYA, or any developer, can develop planned, have a
9 parcel of land, a property of land zoned to RT for the
10 purposes of developing under RT.

11 Q And what's the first one of those alternatives?

12 A Little subsection A provides that RT is suitable
13 in sections of the County that are designated for
14 residential development at densities allowed in the RT
15 zones.

16 Q Is the Chelsea School property so designated in
17 the master plan?

18 A No. There is no question that the Chelsea School
19 site is not designated as such in the master plan, and I
20 believe that EYA has conceded this point.

21 Q What about the other two requirements, do you feel
22 that the R-15 Zone is appropriate under either of the other
23 two requirements?

24 A I believe that the second option for allowing RT,
25 which is that the property is appropriate, appropriate for

1 residential development at densities allowed in the RT zone,
2 I do not believe that that is the case here.

3 Q And why is that?

4 A You've heard from many witnesses, Ms. Robeson,
5 from my side as to why we don't believe that this is an
6 appropriate development for our neighborhood and I agree
7 with everything that people have said. In my opinion, this
8 is a highly dense development, proposed development. It's
9 tightly packed in. It seems that EYA is attempting to pack
10 in as many townhouses as possible on the land and I just do
11 not think that that is appropriate or compatible with our
12 community.

13 Right now the property, as you know, is currently
14 zoned in the R-60 zoning with a special exception for the
15 Chelsea School and other schools and it's suitable for
16 development under the R-60 zone. You can build single-
17 family detached homes, you can build duplexes, you can even
18 build number of townhouses there.

19 As it stands now, on my part, on my section of
20 Springvale Road, there are six houses. Behind the Chelsea
21 School property to the south, there are nine houses on Cedar
22 Street which borders it on the south. To the east is
23 Pershing Avenue. There are five single-family detached
24 homes there, residences. To the west, you have a small
25 library and you have a playground. What this means, from my

1 perspective, is that we have a quiet neighborhood with only
2 20 houses surrounding this property and a very quiet library
3 and a park that is also a quiet, peaceful park. But what
4 EYA is attempting, would like to do is put 76 townhouses in
5 the middle of a site that's surrounded by 20 residential
6 homes, single-family detached homes. It's just going to
7 overwhelm our part of the neighborhood.

8 Now, I know you want to believe that this is an
9 appropriate use of the site. Obviously, I disagree. I
10 don't believe that this kind of high-density development is
11 appropriate for a neighborhood that's characterized by wide
12 open spaces and tranquil tree-lined streets. This, my
13 neighborhood of Seven Oaks-Evanswood is a place where people
14 come to stay for a very long time. That's my intent and my
15 wife's intent.

16 We moved in 12 years ago. We envisioned staying
17 for many years to come and because I believe our neighbors
18 are of similar thought, this is a place where you grow old
19 with your neighbors. This is a place where you see your
20 neighbors have babies and you watch those children grow up.
21 This is even a place where you get to know your neighbor's
22 pets. I've returned a few dogs to their rightful owners if
23 they've strayed into our yard. So this is a community where
24 people put down roots. This is a long term community where
25 families are raised and where people grow old together and

1 celebrate life events together.

2 As I said, there are many green open spaces. The
3 streets are beautiful. My wife and I like to stroll down
4 these streets in the evenings and on weekends and it's just,
5 it's a very pleasant change of pace from the city where we
6 used to live. We see neighbors walking their dogs, you see
7 kids playing in the street, you see people gardening in
8 their yards. It's that kind of community.

9 I'd like to think of it as a place where you can
10 relax and just grow and escape the maddening crowd but this,
11 in my opinion, this is a massive development of 76
12 townhouses that is being attempted to be forced into our
13 neighborhood and I would consider that as jarring, as going
14 to a library and having somebody walking in with a boom box
15 and blasting rock music. I love rock music but it is not
16 appropriate for a library and by that same extension, I do
17 not believe that this massive development is appropriate for
18 our neighborhood.

19 Q Now, you talked about buffer and transition as one
20 of the ways in which one can justify RT zoning. Do you
21 think that -- you understand that the Chelsea School is
22 leaving property, don't you?

23 A I understand that is their intention.

24 Q Would you not regard a townhouse development like
25 this as an appropriate buffer or transitional use between

1 the CBD and the, and residences such as yours?

2 A Not only do I consider it inappropriate, I do not
3 consider it a -- there is no need for a transitional use on
4 this property. We already have a transitional use
5 elsewhere.

6 Q Now, my understanding is you're going to
7 illustrate this with a slideshow?

8 A That will be part of my slideshow presentation,
9 yes.

10 Q Okay.

11 A May I -- I'd like to say a little extra on this if
12 I could.

13 Q All right. There's another point I wanted to ask
14 you to evaluate before you get to that. Were you here for
15 Mr. Iraola's testimony?

16 A I was, yes.

17 Q Mr. Iraola said the following. I'm quoting from
18 his testimony. "In a floating zone application, the
19 surrounding area is defined as those areas most directly
20 affected by the proposed development in order to evaluate
21 compatibility. A useful description of what a surrounding
22 area plan is was given to, given by Planning Board Chairman,
23 Francoise Carrier, at the May 19th Planning Board hearing.
24 She used a metaphor of a calm pool of water representing the
25 surrounding area and a pebble representing the subject

1 property. When a pebble is dropped into the pool, it causes
2 ripples. The bigger ripples occur closest to the point
3 where the pebble was dropped and the ripples dissipate as
4 they radiate from that point. The larger the ripple
5 represents more effects."

6 Do you have any disagreement with the
7 applicability of that metaphor in this particular situation?

8 A I thought almost immediately upon hearing that
9 metaphor that that was not the right metaphor for this
10 proposal.

11 Q And why is that?

12 THE WITNESS: May I illustrate using that picture?

13 MS. ROBESON: Certainly. Exhibit 1 --

14 MR. BROWN: 77.

15 THE WITNESS: Exhibit 177. Chairman Carrier's
16 metaphor, a pebble being dropped into a pond in ripples is a
17 lovely metaphor. Everybody loves to see that. It's a
18 gentle image. My metaphor for this proposal is more like an
19 underwater earthquake happening on --

20 MS. ROBESON: Okay. Can you stand on the other
21 side?

22 THE WITNESS: Yes.

23 MS. ROBESON: Because I --

24 THE WITNESS: I'm sorry.

25 MS. ROBESON: Now I can see it. Thanks.

1 THE WITNESS: The pebble metaphor is the pebble
2 drops here and spreads out here and here and here and here.
3 I don't see it that way. I see this as an underwater
4 earthquake causing a tsunami like there's one wave from the
5 dense CBD. It does not go there. The tsunami effect will
6 go into the neighborhood. That is my metaphor. Underwater
7 earthquake and tidal wave. The tidal wave being all the ill
8 effects that I and others believe this proposal will create.
9 Everything from traffic to noise to setting a precedent for
10 other possibly high-density developments in vulnerable areas
11 of the neighborhood.

12 BY MR. BROWN:

13 Q Now, if the Chelsea School went away and the
14 property were taken over by another school subject to special
15 exception, would you have a problem with that?

16 A No. I think schools make good neighbors. I grew
17 up down the street from a school all my life until I went
18 away to college. Schools are part of residential
19 neighborhoods like my own, part of suburban neighborhoods
20 with single-family detached homes. This school, Chelsea
21 School, has been a good neighbor, I have no complaints and I
22 would welcome another school. I really would.

23 Q You also heard Mr. Teller talk about how you have
24 failed to appreciate or visualize what this property would
25 look like if it were developed under existing zoning. Do

1 you agree with his analysis on that?

2 A I think Mr. Teller, who was giving short shrift to
3 the capacity to the rest of his neighbors to imagine, not
4 only imagine what this development would look like but to
5 have real world examples. I have walked through townhouse
6 development. I walked through the Cameron Hills
7 development. I do not think I have a problem envisioning
8 what this proposal would look like were it to become
9 reality.

10 Q But my question is he was also criticizing your
11 ability to visualize how bad an R-60 development would look.

12 A I see. I see.

13 Q So what is your reaction to that?

14 A Okay. Well, I live in R-60 community. I see
15 nothing wrong with R-60 development. Mr. Teller, I believe,
16 had criticized some people, people were fearmongering
17 against this development. I think he was fearmongering in
18 support of this development. He was raising the specter of
19 enormous McMansions crammed into each other on the property
20 but even if this property were developed as McMansions,
21 there is a property on Woodside Parkway that used to be a
22 field and now it was developed into what is called
23 McMansions and I have walked past that property. I think
24 there would be nothing wrong with living across the street
25 from that property.

1 Q Anything else you'd like to add before going
2 through your slideshow?

3 A Well, I'd like to talk more about the school
4 traffic. The school traffic is not a problem. There are
5 buses that do line up at the end of Springvale, Springvale
6 Road by Pershing Drive. They are a minor nuisance at, at
7 most. Sometimes if it's raining and I'm driving my wife to
8 Metro instead of having her walk, you might have to go
9 around the buses a little slowly but the buses are not a
10 problem. They're there in the morning and they come back in
11 the middle of the afternoon when we're all at work and they
12 are gone by the time we come home, so I do not consider the
13 current school traffic to be a problem whatsoever.

14 Should a new school come in, they would have to
15 abide by the special protections that the Chelsea School is
16 now abiding by, which means that bus traffic would have to
17 go in via Ellsworth Drive, so even the minor nuisance of
18 having buses on Springvale Road would be eliminated. And in
19 the unlikely event that a parochial school should come in
20 which would not have to abide by the special protections, I
21 think it would still be fine. Buses come in in the morning
22 and they are gone by the time you come home. Beyond that,
23 the school is closed on weekends, it's closed in the
24 evenings, it's closed on holidays. I have no complaints
25 about school traffic.

1 Q Do you also have a concern about the banishing
2 binding element about access on Springvale?

3 A I think I need to read from my testimony for this
4 response. Forgive me. I learned about the rescission of
5 the binding element two days ago and I was greatly disturbed
6 to learn it. The binding element, the second sentence of
7 binding element no. 6, which is the element that EYA has
8 removed or rescinded, reads, quote, "There shall be no
9 vehicular access to or from Springvale Road." By rescinding
10 that element, EYA has changed everything, in my opinion, to
11 how their proposal will have an impact on the cut-through
12 traffic not only down Springvale Road but through the rest
13 of the neighborhood.

14 I'd like to point out that at the Planning Board
15 hearing on May 19th, EYA made a big show of demonstrating
16 that they were committed to our neighborhood and part of
17 this commitment was their binding element not to allow
18 ingress or egress onto Springvale Road. EYA stated that
19 this binding element would help assure my community of the
20 compatibility of their project.

21 Indeed, this binding element was so important to
22 the Planning Board that both Chairman Carrier and
23 Commissioner Dreyfuss made a point of emphasizing that they
24 wanted to keep the binding element which reads, "There shall
25 be no vehicular access to or from Springvale Road," because

1 Chairman Carrier said, quote, "That is a promise that the
2 applicant made to the community." This exchange occurred at
3 the four hour, three minute 55 second mark of the videotape
4 recording of the May 19th hearing.

5 The result of a road from a 76 townhouse
6 development onto Springvale Road, my road, I believe would
7 be disastrous for my street and for the neighborhood.
8 Going, if you're heading east on Springvale Road, which they
9 could do now if they can get access onto Springvale Road,
10 they will take that down to Pershing Avenue, Pershing Drive
11 and make a right turn to go to the Whole Foods, if they want
12 to disobey the traffic law there, or they will go down to
13 Wayne Avenue and go down the other part of Springvale Road.
14 Either way, all of a sudden, all of these cars will be
15 going down to the Whole Foods shopping center and I know
16 that's within walking distance, but I'm a big walker.
17 However, when I shop for the week, I take my car. I don't
18 carry back a week's worth of groceries and I don't expect
19 many other people will.

20 That's also, as I said, they would use Springvale
21 Road to go down to Wayne Avenue which is how you get to
22 Takoma Park or other areas so there will be all sorts of
23 traffic now on Springvale Road going west. I'm sorry, going
24 east. And the other way is if they want to get to the
25 Beltway, they would go west down Springvale Road, make a

1 right turn on Ellsworth Drive, which they could not do now
2 if there was no cut-through, if there was no access on
3 Springvale Road, and they will use that to get to Dale
4 Drive, to get to the Beltway, to get to Georgia Avenue.

5 Contrary to what Mr. Teller said, I don't know
6 anybody who gets to Colesville Road by making a left on
7 Ellsworth and a right onto Cedar for Colesville. The que
8 there, the traffic que is ridiculous. It's a very long
9 traffic light. I avoid that whenever I can. When I drove
10 here this morning, I took Ellsworth down to Dale to
11 Colesville Road. You escape that whole horrible traffic
12 light and the long queues. So this, rescinding this binding
13 element I think is just a disaster from a traffic point of
14 view. My street and the whole neighborhood now will be
15 susceptible to all sorts of cut-through traffic that would
16 not be present to this extent were there not access onto
17 Springvale Road.

18 Now, I think it's reasonable to conclude that the
19 Planning Board recognized this and they based their
20 recommendation on part on EYA's promise to our community,
21 but now EYA has apparently broken that promise and it makes
22 me wonder what other promises and what other commitments
23 they have made to us and the Planning Board that they will
24 not keep as soon as it becomes inconvenient to do so. I am
25 greatly worried that a project that is already widely

1 inappropriate and incompatible for my neighborhood will
2 become even more so.

3 Q Anything else that you want to mention before
4 turning to the slideshow?

5 A There is one other thing I'd like to mention if I
6 may. I'd like to go back to the third prong in the Zoning
7 Ordinance that would allow the RT zoning, and that is
8 Section 59-C-1.72(b). RT zoning is a suitable site to
9 townhouses in locations in the County where there is a need
10 for buffer or transitional uses between
11 commercial/industrial or high-density apartment uses and
12 low-density one-family uses. Okay. I do not believe that
13 EYA has satisfied this prong. I do not believe that they
14 can. We already have a transition between the central
15 business district and our neighborhood and that transition
16 is the row of single-family detached homes on the north side
17 of Cedar Street.

18 Now, this North Silver Spring Master Plan
19 reaffirms the basic concepts of the 1978 North Silver Spring
20 Sector Plan. It says that on page 1. On page 43 of the
21 master plan, if I may quote from it, "The 1978 North Silver
22 Spring Sector Plan recommended that certain properties were
23 suitable to apply for a special exception that allows a
24 nonresident professional office in the R-60 zone. According
25 to the 1978 North Silver Spring Sector Plan, the purpose of

1 this recommendation was to provide a transition by use, not
2 by structure type, from properties at the edge of the
3 neighborhoods to those in the interior."

4 And on page 44, they refer explicitly to the row
5 of single-family detached homes on Cedar Street. The master
6 plan says, quote, "Retain the designation that properties on
7 Cedar Street between Ellsworth Drive and Pershing Drive are
8 suitable to apply for the nonresidential professional office
9 special exception. These properties are located on the
10 border between North Silver Spring and the Silver Spring
11 central business district."

12 This master plan confirms what the residents of
13 Seven Oaks-Evanswood have known for years, that the single-
14 family detached homes on Cedar Street already serve as a
15 buffer between our community and the high-density
16 development of CBD. We have no need for a new buffer or a
17 transition.

18 Q Okay. Go ahead.

19 A If I may, I'd like to go through my photo essay.

20 MS. ROBESON: Sure. I just have one question.
21 What about, are you opposing townhouses or are you opposing
22 the density of these townhouses?

23 THE WITNESS: I am opposing the density. I will
24 accept development under R-60. I have preferences under R-
25 60. I prefer single-family detached homes, but I will

1 accept townhouses under R-60.

2 MS. ROBESON: And what about Mr. Harris' argument,
3 and I can't remember, there was a, he did a handwritten map,
4 and I'm sorry I can't remember the exhibit offhand, but it
5 had a row of townhouses with driveways exiting onto
6 Springvale. And that was supposed to be, if I'm recalling,
7 that was supposed to be a possible R-60 --

8 THE WITNESS: Right. Well --

9 MS. ROBESON: -- scenario.

10 THE WITNESS: -- as I, as I said, Chelsea School
11 is selling. Change is coming to the property and I am
12 willing to accept change under the R-60 zone. If there were
13 townhouses with driveways, so be it. That's what, that is
14 not that dissimilar than other streets in my neighborhood,
15 houses with driveways right across the street. We just
16 happen to live across from the school. So I would accept
17 that.

18 MS. ROBESON: Okay.

19 THE WITNESS: I would just like to say because of
20 while traffic is a big concern of mine, it's not the only
21 concern I have about this development, this proposed
22 development.

23 MS. ROBESON: And what is, what are your other
24 concerns?

25 THE WITNESS: My other concern is that it will be

1 the first step in destabilizing the character and integrity
2 of my neighborhood. I do have some noise concerns but I'm
3 also concerned that there are other vulnerable properties in
4 our neighborhood that if this precedent is set with this re-
5 zoning, does the Springvale Terrace retirement home down the
6 street on Springvale Road? I can think of several other
7 properties that could go. I just think we're under such
8 intense pressure from development that what's a lovely
9 neighborhood could be chipped away piece by piece.

10 MS. ROBESON: So you're concerned sort of for a
11 domino effect through the community.

12 THE WITNESS: That is one way to put it, yes. I'm
13 concerned that this could be the start of more.

14 MS. ROBESON: All right. I assume Mr. Brown is
15 getting ready to ask you--

16 BY MR. BROWN:

17 Q I want to ask you one more question.

18 THE WITNESS: I have full faith in my counsel.

19 BY MR. BROWN:

20 Q Mr. Gurwitz, you heard, you heard this, you heard
21 Exhibit 130 discussed earlier today and I believe that
22 Hearing Examiner Robeson asked particularly about the fate
23 of this one-family detached residential neighborhood --

24 A Um-hum.

25 Q -- east of Pershing and west of Wayne between

1 Cedar and Springvale. Is this part of the domino effect
2 area that you're concerned about?

3 A I think that that is one of the, that is one of
4 the red flag zones where a high-density development could
5 occur next because there is Springvale retirement home
6 there. That's a big plot of land. Should they sell, I can
7 see an attempt to re-zone that too and then that would be
8 terrible. It would be terrible not only in conjunction with
9 76 townhouses on my part of Springvale but it will be
10 horrible to the people on the other side of Springvale who
11 would be sandwiched between high-density development across
12 the street and then high-density development to their west.
13 So yes. That's one of the areas of concern for myself and
14 other residents of the neighborhood.

15 Q Thank you.

16 A They can both go down.

17 Q Okay.

18 A I will do my best, Ms. Robeson, to be technically,
19 technologically a joy to you but please forgive me if I'm
20 not. Thank you.

21 (Discussion off the record.)

22 THE WITNESS: Okay. Ms. Robeson, Mr. Harris, Mr.
23 Youngentob, what I did shortly before the May 26th hearing
24 was because I and my wife are the only two people who walk
25 to the Metro every day from Springvale Road, and so that's

1 my commute to the Silver Spring Metro. What I decided to do
2 was take pictures on the return trip from the Silver Spring
3 Metro back into my community so that you can see how the
4 streets and the environment and the setting changes as I
5 walk home to my neighborhood.

6 So this is leaving the Silver Spring Metro looking
7 north up Colesville Road. This is turning west onto Wayne
8 Avenue and Wayne Avenue is the west border of Seven Oaks-
9 Evanswood neighborhood. This is heading north through
10 Discovery Buildings Plaza. This is how I walk home. After
11 you cross through the plaza, this is Georgia Avenue, which
12 is a main avenue, and I'm crossing it heading north onto a
13 part of the Ellsworth Drive that's in the CBD. This is
14 heading up, heading north up Ellsworth Drive in the CBD.

15 This is approaching the end of Ellsworth Drive and
16 you're nearing the intersection with Fenton Street which is
17 one of the busier streets in the CBD. This is looking west
18 down one side of Fenton Street and you can see what it
19 looks, the high-density development there, high-density
20 properties. And this is looking east up the other side of
21 Fenton Street so you can see what the CBD looks like.

22 I continue to cross north and this is Veterans
23 Plaza, so I'm leaving Fenton Street heading north. On the
24 right side of Veterans Plaza, there's the Whole Foods
25 shopping center and this is just one of the pathways along

1 the west side of the shopping center. Now I'm entering the
2 Whole Foods parking lot. That green, all those green trees
3 in the distance, that's my neighborhood. I'm getting close,
4 so I'm facing north right now. Leaving the Whole Foods
5 parking lot, you can see already the change that's coming
6 from the CBD into my neighborhood.

7 This is the intersection of Pershing Drive and
8 Cedar Street. Pershing -- across the street, across Cedar
9 Street, that's my neighborhood. This is looking west down
10 Cedar Street, across the street. These are the single-
11 family detached homes that are the buffer between the CBD
12 and my neighborhood. This is heading north on Pershing
13 Drive. The Chelsea School property is actually on the left
14 of that picture. I have turned around to say good-bye to
15 the CBD. That's what it looks like when you look back.
16 That's the Whole Foods shopping center.

17 This is looking west. That's, that's part of the
18 Chelsea School and that's part of the Riggs-Thompson house,
19 historic house. Continuing up Pershing Drive heading north,
20 that's Pershing Drive. That's heading north. That is going
21 into my neighborhood. You can see what it looks like deep
22 into the neighborhood. It looks all like that until you get
23 to Sligo Creek Park. It's beautiful. Now I'm making a left
24 turn heading west onto Springvale Road which is my road.
25 That is my house. That is my house as seen from across the

1 street when standing on the Chelsea School property. That
2 is looking west down the remainder of Springvale Road.
3 There's a cul-de-sac off of Springvale Road, it's called
4 Springvale Court, and that's looking north into it. Those
5 are my neighbors. That is my view from across the street.
6 That is the Chelsea School, and I like the architecture
7 actually. It's very nice to look at.

8 Now, if you're standing on my front porch and you
9 are looking to your right, this is the Chelsea School
10 parking lot. The Colesville Towers apartment complex you've
11 been hearing about, I can't see it. It is, it's somewhere
12 there. Now, you might see it in the fall and winter but
13 it's this, it's this blob out there. Nobody pays attention
14 to it but as you can see when there are leaves, I don't see
15 it. I don't know it's there. That is the end of my
16 presentation.

17 MS. ROBESON: Okay.

18 BY MR. BROWN:

19 Q Have we covered everything, Mr. Gurwitz?

20 A I believe I have -- I would like to make a short
21 closing statement. Very short. Very brief.

22 MS. ROBESON: All right.

23 THE WITNESS: I want to say that this case is not
24 about EYA and this case is not about the Chelsea School's
25 owners and how much they can sell their property for as they

1 leave our neighborhood. This case is about we residents who
2 will remain and live in the neighborhood once the Chelsea
3 School owners depart and once the properties develop. This
4 is a case about what happens to we who live there.

5 I really have grown to love the Seven Oaks-
6 Evanswood neighborhood. It's such a wonderful place to live
7 and I mean that sincerely. It's wonderful because it's not
8 high-density, it's not the central business district. As I
9 said earlier, it's quiet streets and low traffic. It's tall
10 green trees filled with wildlife of all kinds and relaxing
11 open spaces. I believe, I truly believe that this is a
12 neighborhood that's valuable beyond words but its beauty is
13 fragile and I implore you to reject this proposed high-
14 density development because permitting it, I believe, would
15 harm the character of the Seven Oaks-Evanswood, Evanswood
16 neighborhood and it would ruin something that could never be
17 replaced once it's removed, and I urge you to please not
18 allow this to happen. Thank you.

19 MS. ROBESON: Thank you. Anymore questions, Mr.
20 Brown?

21 MR. BROWN: (No audible response.)

22 MS. ROBESON: Mr. Harris?

23 MR. HARRIS: Thank you.

24 CROSS-EXAMINATION

25 BY MR. HARRIS:

1 Q Mr. Gurwitz, you're describing the neighborhood as
2 a wonderful place and I understand what you're saying.
3 You're saying you're happy with the way the neighborhood is
4 now.

5 A I am.

6 Q And therefore, you would disagree with those who
7 said at the time of the CBD redevelopment that it was going
8 to ruin the surrounding neighborhood. The CBD redevelopment
9 didn't hurt you at all, did it?

10 A I was not present at the time of the CBD
11 development so I don't know what the arguments were about
12 it.

13 Q But it hasn't hurt you at all, has it?

14 A No, it has not.

15 Q And nor has the Colesville Towers building there.
16 That's not been an adverse impact on you either, has it?

17 A That is correct.

18 Q Nor has the Springvale nursing home.

19 A That is correct.

20 Q The --

21 A Mr. Harris, may I amend something I said?

22 Q Sure.

23 A I've been here for 12 years and I believe that the
24 redevelopment of the CBD was beginning. I don't want to
25 misspeak. I was present for part of that.

1 Q Okay. That's fine. You talked about the -- well,
2 let me go back and kind of follow some things here. As far
3 as townhomes, you talked about how close-knit your, you and
4 your neighbors are. Is there any reason townhome owners
5 aren't as closely knitted as that?

6 A Could you expand the question? Closely knitted
7 between --

8 Q To the --

9 A Between who?

10 Q Aren't the people who live in townhomes you, me,
11 Mr. Brown, Ms. Robeson, people like us?

12 A They could be, yes.

13 Q And can't they be just as friendly to one another
14 as people who live in a single-family detached home?

15 A Yes.

16 Q And can't they be just as friendly to a person who
17 lives in a single-family detached home even though they may
18 live in a townhouse?

19 A Yes.

20 Q So the type of unit in which you live doesn't
21 define you as a person.

22 A I agree with that statement.

23 Q And you would expect these people to have similar
24 lifestyles to yours in terms of income, in terms of
25 profession?

1 A Well, they might have a higher income than me but
2 I, until they move, if they were to move in, I don't know
3 how to answer that question.

4 Q Okay. And you would agree with me that there are
5 townhomes incorporated into single-family detached
6 communities throughout the County.

7 A I'm trying to think if I know if that's a fact or
8 not. I'm going to say I don't know.

9 Q Do you know of any other circumstances where there
10 are townhomes in close proximity to single-family detached
11 homes?

12 A I've never visited any so I don't know.

13 Q Have you ever driven past any?

14 A I do not recall driving past townhouse, townhouse
15 developments that were in single-family detached homes
16 neighborhoods. That's the --

17 Q Have you ever been to the corner of Georgia Avenue
18 and Spring Street where the Park and Planning Commission is?

19 A I have.

20 Q Have you ever seen the townhomes across Spring
21 Street from them?

22 A I imagine I have.

23 Q But they haven't stuck out to you. You barely
24 noticed them if they are there.

25 A That is correct.

1 Q And aren't there single-family homes directly
2 across the street from those townhomes?

3 A I don't know.

4 Q If the record proves that there are single-family
5 homes across from them, would you agree that it's a
6 compatible situation?

7 A I don't know the answer to that question without
8 knowing more about the neighborhood.

9 Q You know nothing negative about that situation.

10 A I did not say that.

11 Q Well, do you know anything negative about that --

12 A I don't, I don't know enough about that situation
13 to answer you at this time.

14 Q So you know nothing. You know of no problem.

15 A My answer remains the same.

16 Q Do you know of any problem with respect to the
17 townhomes on Fairview Road just north of Spring Street in
18 the Woodside neighborhood?

19 A I'm not familiar with that development or that
20 neighborhood really.

21 MS. ROBESON: Well, you can answer his question
22 whether you know of any bad --

23 THE WITNESS: I'm sorry. No. I do not have
24 enough information to answer yes or no. I do not know.

25 MS. ROBESON: Well, you can answer whether you

1 know of any bad impacts if you do not know.

2 THE WITNESS: Okay.

3 MS. ROBESON: Correct?

4 THE WITNESS: That is correct.

5 BY MR. HARRIS:

6 Q Do you know of any bad impacts?

7 A Please restate the question fully.

8 Q Do you know of any circumstances in the County
9 where there are townhomes near single-family where they have
10 created an adverse impact?

11 A I do not know that.

12 Q Are you aware that the RT-15 zone allows a density
13 of 18.3 units per acre?

14 A I do not know that.

15 Q Are you aware that there are other zones in
16 Montgomery County, such as the CBD zone, that allow
17 townhouse densities far greater than that?

18 A I do not know that.

19 Q Would it be safe to say you're not an expert on
20 the Zoning Ordinance then?

21 A It is safe to say that.

22 Q Are you aware that EYA has done townhouse projects
23 at densities as high as 40 units per acre?

24 A I do not know.

25 Q If it turns out that they have done projects at 40

1 units per acre, would you change your answer that 14.67
2 units per acre is a high-density townhouse development?
3 Wouldn't it be a middle density townhouse development
4 compared to 40 units per acre?

5 A I will say that it is a lower density development
6 but I think I would need to know more about the specific
7 proposal and the specific area before I can answer that.

8 Q Are you aware of the density of Cameron Hill
9 townhouse development in Silver Spring?

10 A You'll correct me if I'm wrong but I believe it's
11 RT-12.5.

12 Q No. It is CBD zoning.

13 A I was wrong.

14 Q Okay. And would it surprise you to learn that
15 it's nearly twice the density of what we're talking about
16 here?

17 MR. BROWN: Objection. No foundation.

18 MS. ROBESON: Mr. Harris, I'm not sure that the
19 line of questioning is characterizing a specific number of
20 units as high, low or medium-density. It's really
21 compatibility with the surrounding area, isn't it?

22 MR. HARRIS: There are multiple dimensions to it.
23 We've heard a lot of testimony, including earlier today,
24 debating the issue of the community's claims to the people
25 who sign the petition that this was going to be a high-

1 density townhouse development. I'm simply trying to point
2 out that it is not a high-density development and to the
3 extent people signed a petition under that pretense, they
4 were misled.

5 MS. ROBESON: Well --

6 MR. HARRIS: And I'm not saying Mr. Gurwitz did
7 that at all. I'm not accusing him of that.

8 MS. ROBESON: I understand but, I understand but
9 I'm not sure pursuing that, I mean, anyone who knows New
10 York City knows that that high intensity development is
11 compatible, and the question I have to decide is whether
12 this proposed density is compatible with the surrounding
13 neighborhood.

14 MR. HARRIS: Okay.

15 BY MR. HARRIS:

16 Q Mr. Gurwitz, if it turns out that the Montgomery
17 County Zoning Ordinance allows townhouses in every single-
18 family residential zone, wouldn't you agree that that
19 demonstrates that the County has determined townhomes to be
20 compatible with single-family detached homes?

21 A I don't know if I can answer that question without
22 knowing more.

23 Q So even if the Zoning Ordinance says townhomes are
24 permitted in a single-family detached community, you're not
25 saying, you're saying that that doesn't demonstrate that

1 they are compatible?

2 A I think that it, it depends on a case by case
3 situation before I could answer that.

4 Q You heard testimony before about, or questions I
5 guess from me, about the R-60 cluster option, which is
6 really the MPDU optional method, and the fact that it allows
7 or requires only a 20-foot setback from Springvale Road.
8 Are you saying you would prefer that to the townhouse
9 setback that EYA has proposed?

10 A I am saying I will accept development under R-60
11 whatever it might be.

12 Q Even if it meant 20 feet from the curb?

13 A I would accept development at R-60.

14 Q Even if it were 45 feet in height.

15 A I would --

16 Q Or 40 feet. I misspoke, 40 feet.

17 A I would accept development under R-60 consistent
18 with the zoning regulations, yes.

19 Q And even if they were all townhomes along
20 Springvale?

21 A I believe -- my answer is going to remain the same
22 for this line of questioning.

23 Q So all of that is okay with you?

24 A I would accept development under R-60, yes.

25 Q Okay. And you would accept single-family homes

1 along there even if they were built with a zero lot line
2 setback.

3 A I don't understand what that means.

4 Q Okay. Your house has to be set back from your
5 side lot line by a certain dimension. Under the R-60 MPDU
6 option, there is no such setback requirement. You can build
7 a house all the way to the lot line. So you would accept
8 that as well?

9 A I will accept development under R-60 consistent
10 with the zoning regulations, yes.

11 Q You were there 12 years ago. I think you
12 mentioned you moved in 12 years ago.

13 A Yes.

14 Q Were you involved at all in the opposition of the
15 Chelsea School?

16 A We were so new to the neighborhood, Bob, I barely
17 remember anything about that and I doubt very highly I was
18 involved in any way with that. I'm sorry. We were just too
19 new to the neighborhood.

20 Q You have seen the letter that I saw, that I put
21 into the record from Mr. Knopf representing SOECA indicating
22 the community's opposition to the Chelsea School special
23 exception?

24 A I've seen it but I confess, I barely read it.

25 Q And so when they complained about the traffic that

1 the Chelsea School would be generating, you disagree with
2 that?

3 A No, I don't. I wasn't there at the time and I
4 don't know what they were complaining about. I can't answer
5 that question.

6 Q Well, okay. Well, then let's find the letter.
7 Exhibit 113 I think. If you would turn to paragraph no. 2
8 on the third page of that exhibit.

9 A Okay.

10 Q The underlined portion says, "The existing
11 facilities seriously adversely impact the neighborhood
12 houses aesthetically as well as by the intensity of the
13 operations." Do you agree or disagree with that?

14 A Neither because I wasn't there long enough to form
15 an opinion. I don't recall what it was like and so I can't,
16 I can't speak to the situation. I'm sorry.

17 Q You've lived there how long, 12 years?

18 A I've lived there 12 years. I don't know --

19 Q Isn't that long enough to --

20 A -- what was going on 12 years ago.

21 Q -- form an opinion about what is there? This is
22 talking about the existing facilities.

23 A I can only speak to how I feel about it now.
24 Twelve years ago, I don't know what, what the issue was.

25 MS. ROBESON: Well, I think his question is about

1 -- well, maybe I'm wrong. I thought his question is about
2 how you feel about the traffic now.

3 THE WITNESS: Oh, okay. Well --

4 BY MR. HARRIS:

5 Q Is this underlined section correct today or
6 incorrect?

7 A Well, I don't know because I don't know if things
8 were different back then. I will say that --

9 Q No. Today.

10 A Today.

11 Q Today.

12 A Okay.

13 Q Do the existing facilities seriously adversely
14 impact the nearby houses aesthetically as well as by the
15 intensity of the operations?

16 A No.

17 Q No. Paragraph no. 4. Do you disagree with this
18 today? The existing main educational building is three
19 stories in height, over 100 feet long, has virtually no
20 landscaping in front. It's only about 40 feet back from the
21 street and thus, dominates Springvale Road, a very narrow
22 street which the building confronts. This is incompatible
23 with the relatively modest homes on the opposite side of the
24 street. Do you disagree with that as well?

25 A Well, there are some factual statements here

1 which, if they're correct, I couldn't disagree with a
2 factual statement. Otherwise, this is a matter of personal
3 opinion. As I said, I think the school is a good neighbor
4 and compatible with our neighborhood.

5 Q Okay. So you disagree with what they're saying
6 here today.

7 A My answer remains what it was, what I just said.

8 Q I didn't understand your answer.

9 A Okay. If --

10 Q I don't think it answered the question.

11 A If the stories are, if the building is three
12 stories in height, over 100 feet long, if those factual
13 assertions are correct --

14 Q Correct.

15 A -- I can't disagree with correct factual
16 assertions.

17 Q Right.

18 A Okay.

19 Q As far as the opinion of the impact.

20 A That this is incompatible to relatively modest
21 homes? I think the school is compatible with the homes
22 right now.

23 Q Okay. And let me show you another letter marked,
24 that's dated April 26th, 2005.

25 MR. HARRIS: If we could have this marked.

1 MS. ROBESON: This will be 178, or wait. Yes.
2 178.

3 (Exhibit No. 178 was marked for
4 identification.)

5 BY MR. HARRIS:

6 Q And can you describe what this letter purports to
7 be?

8 A Well, I would like a chance to read the whole
9 letter.

10 Q Okay.

11 A That will take some time, before I describe it.

12 Q Well, go ahead. Take the time.

13 A I've given the letter a read. I don't feel like
14 I've had time to fully digest the letter though I, not in
15 this setting, not with the brief amount of time that I
16 really have, but I'm willing to answer questions if I can.

17 Q This is a letter from SOECA, correct?

18 A It appears so, yes.

19 Q And it's addressed to an attorney representing the
20 Chelsea School.

21 A I do not know for a fact that this attorney is
22 representing the Chelsea School but I accept that he might
23 be.

24 Q But it concerns the Chelsea School.

25 A Yes, it does.

1 Q And it was written in 2005.

2 A Yes, it, yes, it was.

3 Q And doesn't it say in the bottom paragraph
4 neighbors find the noise, vibration and noxious fumes that
5 emanate from the school buses, which still deliver, pick up
6 and idle while they wait along the narrow neighborhood
7 streets, to be onerous, dangerous and unhealthy.

8 A That is what it says here.

9 Q But you disagree with that?

10 A I don't disagree that some neighbors might have
11 felt that. I don't know if that's the case though but I
12 don't disagree that it says this.

13 Q No. Do you disagree that that's the effect of the
14 school?

15 A That is not the effect at my house.

16 Q Okay. I show you another document here. This one
17 is identified as Seven Oaks-Evanswood Citizens Association
18 proposed findings of fact and conclusions of law.

19 MS. ROBESON: Okay. I'm marking this as Exhibit
20 179.

21 (Exhibit No. 179 was marked for
22 identification.)

23 BY MR. HARRIS:

24 Q And from the heading on this, the caption, it
25 appears to relate to the Chelsea School special exception,

1 Case No. 2405. Would you agree with me on that?

2 A I agree.

3 Q And at the end of it, the last page, it's
4 submitted by Norman G. Knopf, attorney for Seven Oaks-
5 Evanswood Citizens Association, is that correct?

6 A Yes.

7 Q And it's dated March 24, 2000.

8 A Yes.

9 Q And would you turn with me to page 6 of this in
10 which it says, the underlined portion, the existing building
11 is incompatible with the confronting and adjacent homes in
12 terms of such factors as size and bulk as well as with the
13 immediate neighborhood which, and then he goes on to say
14 that. It does say that, doesn't it?

15 A It does say that here.

16 Q And doesn't it then follow in the next paragraph,
17 the proposed additions would exacerbate the aesthetic
18 incompatibility by adding to the length and bulk of the
19 building and giving the impression of one massive building.
20 It is particularly incompatible given the relatively small
21 size of the homes confronting and adjacent to the school.
22 You disagree with that, I believe.

23 A Well, I agree it says that here. I don't know
24 really what they're talking about.

25 Q Okay.

1 A It does say that here.

2 Q Okay. Paragraph 4 says the aesthetics are also
3 detrimental to the use and enjoyment of homes of residence
4 confronting the school on Springvale as well as houses, as
5 well as homes whose backs face the school. Is that an
6 accurate statement from your --

7 A I don't know --

8 Q -- perspective?

9 A I don't know what aesthetics they're referring to,
10 what part of the school they're referring to. I'm sorry.

11 Q The school itself. Are there any aesthetic,
12 adverse aesthetic impacts from the school?

13 A That's not a yes or no question. I mean, every,
14 every building has parts that are more attractive than
15 others.

16 MS. ROBESON: Well, right. But it is germane to
17 your testimony so you do need to answer.

18 THE WITNESS: Okay.

19 MS. ROBESON: You have to be responsive to his
20 question.

21 THE WITNESS: I understand. From my perspective,
22 the school is not aesthetically unpleasing.

23 BY MR. HARRIS:

24 Q Okay. And no. 5 ways objectionable noise and
25 glare as has been demonstrated by the presence of the upper

1 driveway. You don't find there to be objectionable noise or
2 glare?

3 A Not in my experience.

4 Q Do you find there to be any objectionable noise
5 coming from the property?

6 A On very rare occasions, as with any property.

7 Q Paragraph or page no. 10, paragraph no. 12 says
8 the current design and location of facilities exacerbates
9 the adverse situation presently existing of persons dropped
10 off at the upper level of the street for school, the parking
11 of cars by school employees after school hours, parking and
12 drop-off by parents or visitors for extra-curricular
13 activities, as it is much more convenient to park on
14 Springvale, for example, than on the lower parking lot and
15 walk up the hill. Again, none of that bothers you?

16 A On very rare occasions, it bothers me but all in
17 all, no, it does not.

18 Q Paragraph no. 13, the facts of record demonstrate
19 that there are numerous adverse impacts, aesthetic noise,
20 glare, activities, all of which could be mitigated or
21 eliminated by modifications to the proposed plans. You
22 disagree with SOECA on that position as well?

23 A Problems can always be mitigated. I would agree
24 with that.

25 Q Paragraph no. 14, the unique existence of a large

1 bulky building already overwhelming the neighborhood is
2 peculiar to this project. Do you agree or disagree with
3 that?

4 A I actually don't understand what that sentence is
5 referring to.

6 Q Okay. A little while ago, you talked about
7 Cameron Hill as one of the reasons that you didn't like that
8 plan, but that plan is actually much more dense than this
9 plan and a totally different concept, isn't it?

10 A I don't think that accurately reflects my
11 testimony. I'm not sure what you're referring to.

12 Q I may have misheard you. Do you recall talking
13 about Cameron Hill?

14 A I do recall mentioning Cameron Hill, yes.

15 Q And did you mention it as one of the reasons that
16 you're opposed to this project?

17 A I don't think that is a fully accurate statement.

18 Q Okay. Well, then correct me, please. I don't
19 recall the statement.

20 A Cameron Hill, where it is seems to be appropriate.
21 I believe that your proposed 76 townhouse development is
22 inappropriate for my neighborhood. That's the best I can
23 answer you there.

24 Q In terms of the R-60 potential development under
25 the MPDU option, if that provided no public greenspace,

1 would you see that as a positive comparison or a negative
2 comparison to the Chelsea Court project?

3 A I believe development under R-60 is preferable in
4 all respects to the Chelsea project.

5 Q Is there any value to the greenspace that we're
6 providing?

7 A Greenspace has value.

8 Q Is there a minimum amount of greenspace that you
9 think is appropriate for development on the Chelsea School
10 site?

11 A In my opinion, we should have 90 percent
12 greenspace.

13 Q But you're aware that the R-60 cluster does not,
14 only requires 2,000 square feet per unit.

15 A Pardon my facetiousness. I am willing to accept
16 development under R-60.

17 Q Even if it meant that you would have, let's see,
18 your number was 39 units they were talking about the other
19 day, so call it 40 times 2 would be 80,000 square feet of
20 greenspace. Would you prefer that to the, with 2.4 acres of
21 greenspace that are shown on this plan?

22 A Because I prefer development under R-60 to RT-15,
23 yes.

24 Q Okay. And you're aware from the testimony that a
25 religious school does not require a special exception.

1 A That is my understanding.

2 Q And the testimony has been that that would allow a
3 school up to 423 students on this property. Did you hear
4 that as well?

5 A That is my understanding.

6 Q And would you find a school with 423 students to
7 be more or less of an impact on the community than the
8 existing school?

9 A I will say only that I believe schools make good
10 neighbors.

11 Q So you would accept a 423 student school there?

12 A Yes, I would.

13 Q And if it's a parochial school, there's a good
14 chance that people are being dropped off rather than school
15 buses because they're coming from a diverse area and the
16 County does not provide school bus service for parochial
17 schools. So is your answer still the same?

18 A I don't know if that's the case.

19 Q Well, if that turns out to be the case.

20 A I would accept the school, parochial or not.

21 Q Including even if it required individual student
22 drop-offs?

23 A I believe that schools make good neighbors.

24 Q Would you accept a 423 student school where the
25 students were not coming by school bus but were being

1 dropped off?

2 A I would accept the school that is built or
3 developed under the R-60 zone and consistent with its
4 regulations.

5 Q Did you hear the testimony earlier today about the
6 number of trips on Springvale from the Chelsea Court
7 project?

8 A Whose testimony?

9 Q It was Mr. Wells' testimony.

10 A I did hear him speak, yes.

11 Q And so I believe his testimony was that under the
12 existing plan, he does not believe any of the cars entering
13 or exiting Chelsea School, or Chelsea Court on Pershing
14 would travel via Springvale Road. Do you have any evidence
15 to suggest that number is incorrect?

16 A I don't know how he arrived at that number. I
17 don't think, in my experience, that's a likely outcome.

18 Q But you have no evidence to suggest otherwise.

19 A Only 12 years of living on that street and seeing
20 how cars use it.

21 Q And do Chelsea cars use it today?

22 A You mean employees or parents, whatnot?

23 Q Employees, parents or students.

24 A I expect they do. I don't know when a car goes by
25 if it's Chelsea or not.

1 Q Okay. You know when there's a school bus there,
2 don't you?

3 A I see the school buses, yes.

4 Q There are at least six school buses there on any
5 given morning.

6 A Honestly, I've never counted. There are several
7 school buses.

8 Q Okay.

9 A On any given school day morning.

10 Q You would accept my premise that there are many
11 more than zero Chelsea School trips onto Springvale today.

12 A I don't know if many more is an accurate
13 description.

14 Q Well, isn't there a driveway on Springvale?

15 A There is a parking lot entrance on Springvale.

16 Q And don't people use that?

17 A People do.

18 Q How many cars are in the parking lot?

19 A It depends on the school day. I've never counted.

20 Q How large is the parking lot?

21 A I don't know the size.

22 Q Isn't it about 20 car or more?

23 A It could be.

24 Q And so their only way of coming in is via
25 Springvale.

1 A I believe --

2 Q So all of those cars would --

3 A Hold on, Bob. Hold on.

4 Q Oh, okay.

5 A I'm trying to think because there's another

6 entrance off of Ellsworth. I do not believe, I do not

7 believe it connects to the parking lot.

8 Q There is a back driveway. You're correct. I

9 don't, somebody could correct me but I don't believe --

10 A No.

11 Q -- it does connect.

12 A Right.

13 Q In any respect, whatever number of cars are parked

14 in that lot have to come via Springvale today.

15 A That's correct.

16 Q You mentioned that you disagreed with the, or you

17 agreed with the one dissenting Planning Board member

18 effectively disagreeing with the other Planning Board

19 members in terms of their conclusions about the master plan.

20 A I agreed with the dissenter's opinion that your

21 proposal should have been not recommended.

22 Q And then that means you also disagreed with the,

23 every member of the Planning Board staff who wrote the

24 Planning Board Staff Report.

25 A I disagree with many of their outcomes, yes.

1 Q And that concerns their interpretation of the
2 purpose clause of the RT zone.

3 A I do not -- if they believe that EYA's proposal
4 meets the purpose clause, I disagree with that.

5 Q But you already admitted that you're not an expert
6 on the Zoning Ordinance.

7 A I'm just somebody who can read words.

8 Q Right. And they are experts on the Zoning
9 Ordinance.

10 A They are more expert than I am.

11 Q You testified that the neighborhood is a very
12 quiet neighborhood. Do you remember that?

13 A Yes.

14 Q And that includes the impact of the library, that
15 it's still quiet even though the library has been there for
16 your entire time.

17 A From my house, the library is quiet.

18 Q And similarly, the Colesville Towers project has
19 not rendered it an unquiet neighborhood.

20 A Correct.

21 Q And the same is true with the Springvale nursing
22 home. That has not made it an unquiet neighborhood or a
23 noisy neighborhood.

24 A Not from my porch.

25 Q Okay. The Chelsea School property is not used for

1 single-family detached purposes today, is it?

2 A I believe that is accurate.

3 Q And in fact, it's not used for residential
4 purposes at all.

5 A That's a question?

6 Q Correct.

7 A To my knowledge, yes.

8 Q Do you believe it would be appropriate to have CBD
9 development like the, well, like Colesville Towers next to a
10 single-family detached development, directly next to it?

11 A CBD development in the CBD is, in general, I
12 believe, appropriate but I'd need to know more about any
13 specific proposal.

14 Q Well, do you believe it would be appropriate to
15 have Colesville Towers right next to single-family detached
16 homes?

17 A Tell me more about the specifics. Where?

18 Q It doesn't matter. Anywhere.

19 A In a, in a CBD zone? If it's zoned for the CBD,
20 you can build, and the towers are appropriate on the CBD,
21 you can build them there.

22 Q I didn't ask whether they can be built there. Is
23 it compatible with an adjoining single-family home?

24 A What kind of single-family home?

25 Q A single-family detached home.

1 A A single-family detached home. I would not want
2 to live in that single-family detached home right next to
3 Colesville Towers.

4 Q You would want some sort of a buffer or
5 transition.

6 A I would not want to have Colesville Towers right
7 next to my house.

8 Q Would you want --

9 A But if I lived --

10 Q Would you want a buffer or a transition?

11 A If I lived in the CBD, I might have a different
12 outlook on everything.

13 Q Colesville Towers is not in the CBD, is it?

14 A It is not in the CBD.

15 Q Are you trying to answer?

16 MS. ROBESON: He answered. He answered your
17 question.

18 THE WITNESS: I'm sorry.

19 MR. HARRIS: Oh.

20 THE WITNESS: It is not in the CBD.

21 BY MR. HARRIS:

22 Q Correct. The question, I'm sorry. I thought I
23 asked it. If the Colesville Towers is not in the CBD,
24 you've answered that, is it appropriate for that to be
25 directly adjacent to a single-family detached home? Is that

1 compatible in other words?

2 A Well, it is already there. Is it compatible? If
3 it were to be built today and there were single-family
4 detached homes, I'd have to consider that but I can't
5 consider -- it's already there. It's a fact.

6 Q If the County wants to develop the library site
7 for high-rise residential, would you find that to be
8 compatible?

9 A I do not believe a high-rise residential tower
10 would be compatible on that site.

11 Q And why is that?

12 A Because I think it is -- first of all, it's not
13 compatible with the current zoning.

14 Q Forget the --

15 A Okay. I just -- for many of the same reasons
16 referred to in our opposition of the 76 townhouse
17 development. For one thing, it would be too dense for the
18 neighborhood.

19 Q There would have to be more of a transition or a
20 buffer between higher density residential and the
21 neighborhood.

22 A Oh, it would have to satisfy a whole slew of
23 factors before it could be even considered compatible.

24 Q Just the park alone isn't enough of a transition
25 there I guess is what you're saying.

1 A I can't answer that now. I haven't thought that
2 through.

3 Q Let's use Exhibit 167 for a minute. This shows
4 the Colesville Towers property here. Your house is
5 somewhere along here and this is the library site right
6 here. If I'm understanding you correctly, you're saying
7 multi-family development there would be too close to the
8 community to be compatible.

9 A I don't believe I said that.

10 Q Well, would it be too close to the community to be
11 compatible?

12 A It depends on the kind of multi-use development.
13 It depends also on what the existing transition or buffer is
14 and I don't know on that location, what that existing
15 transition and buffer is considered to be.

16 Q Do you know this area?

17 A I do.

18 Q And you know the library.

19 A I do.

20 Q Assume the library were developed at multi-family,
21 as a multi-family project with the same density as
22 Colesville Towers.

23 A Okay.

24 Q Is that compatible or not compatible with the
25 community?

1 A With my community?

2 Q Yes.

3 A Well, it's not within the SOECA boundaries and I
4 wouldn't like it.

5 Q But you would, you would be okay with it? You
6 wouldn't oppose it?

7 A I'm not certain I would say that yet. I'm not
8 certain.

9 Q But it might be --

10 A I don't --

11 Q But it might be okay.

12 A I doubt it would be.

13 Q Would it be okay if it were over here? Is it a
14 function of distance I assume?

15 A It would be okay for my neighborhood. I don't
16 think it would be okay for the neighborhood where it would
17 be located.

18 Q So the further it is from single-family, the
19 better it is.

20 A It depends on many factors. I'm not going to
21 answer that question flat out yes or no.

22 Q Okay. I think it's pretty clear. Do you believe
23 a buffer of 80 feet between the CBD and single-family
24 detached units is appropriate, or should it be greater?

25 A I'd have to know more about what that buffer is

1 composed of.

2 Q If the buffer were a park.

3 A It could be.

4 Q Could be. If someone were to assemble this block
5 over here on Wayne Avenue, opposite Wayne Avenue. I'm
6 sorry.

7 MS. ROBESON: On the east side

8 MR. HARRIS: Yes.

9 MS. ROBESON: Southeast side.

10 BY MR. HARRIS:

11 Q East of Wayne Avenue I guess it would be, north of
12 Cedar Street. If that were to be converted to multi-family
13 development, would you find that compatible with these homes
14 in this block here, the block bounded by Cedar, Pershing,
15 Springvale and Wayne?

16 A I don't know yet.

17 Q Would you oppose higher density development on the
18 Springvale nursing home?

19 A I believe that development should be at the
20 current zoning.

21 Q That doesn't answer the question. Would you
22 oppose higher density development there?

23 A You mean at different zoning?

24 Q It doesn't matter what the zoning is. Would you
25 oppose the development?

1 A I'd have to know more about the development before
2 I could answer that.

3 Q A six story multi-family building.

4 A Is that allowable under R-60?

5 Q Yes.

6 A It's allowable under R-60.

7 Q Yes.

8 A I would accept development under R-60.

9 Q Even if it's a six story multi-family building.

10 A I would accept development under R-60.

11 Q Would you find that compatible?

12 A I would accept development under R-60 which by --

13 Q That isn't the question. Is it compatible?

14 A Development under R-60 is compatible with the
15 neighborhood.

16 Q It is. Okay. So it all depends on the zoning.
17 It doesn't -- if something is allowed in the R-60 zone, it's
18 compatible?

19 A I'm not going to say that a sweeping statement
20 like that is always correct.

21 Q Isn't that what you just said? How does your
22 statement differ from that?

23 A R-60 development is compatible with my
24 neighborhood.

25 Q Whatever is allowed in the R-60 zone is

1 compatible.

2 A R-60 development is compatible with my
3 neighborhood.

4 Q Are the uses allowed in the R-60 zone and the
5 densities allowed in the R-60 zone compatible?

6 A R-60 development is compatible with the
7 neighborhood.

8 Q That's not answering the question.

9 A Well, if uses and -- please repeat the question.

10 Q Are the uses and densities allowed in the R-60
11 zone compatible with your neighborhood?

12 A Yes.

13 Q And so if we demonstrate that a six story multi-
14 family building could be built across the street from you,
15 that would be okay with you?

16 A I would --

17 Q You would find it compatible? Let me ask it that
18 way.

19 A My answer remains that I will accept development
20 under R-60.

21 Q Do you remember a meeting where you suggested that
22 EYA pull the townhouse, the original design back from
23 Springvale Road and you drew a diagram showing how you would
24 propose that being done?

25 A Yes. And I believe you took it.

1 Q Yes. I liked it.

2 A Thank you.

3 Q I did. Or Bob Youngentob had it. You changed
4 your mind later and didn't support that by the fact that
5 you're here today.

6 A This is -- the question is too ambiguous. Please
7 be more specific.

8 Q Okay. Was it your intent to support that at the
9 time?

10 A Support what?

11 Q A project that pulled the units back as you drew
12 on the plan that you gave to Mr. Youngentob?

13 A My intent was to make suggestions to EYA and to
14 consider things, and I have determined that despite whether
15 or not you did that because of my suggestion, because I
16 don't know how EYA operates or why it does what it does, I
17 am opposed to this development.

18 Q So even though you proposed that, you didn't feel
19 obligated to support the project based on that?

20 MS. ROBESON: I think he just answered that.

21 MR. HARRIS: Okay. Well, I'm trying to lay a
22 foundation for something else. He --

23 MS. ROBESON: Well, can you make it more direct?

24 MR. HARRIS: Well --

25 MS. ROBESON: Okay.

1 MR. HARRIS: Fine. Fine.

2 MS. ROBESON: I'll let you have --

3 MR. HARRIS: No. I'm fine.

4 MS. ROBESON: -- a little bit of leeway.

5 MR. HARRIS: Rule 1 is don't upset the ZHE.

6 BY MR. HARRIS:

7 Q You are correct that Mr. Youngentob talked about
8 no access to Springvale Road as a proposal. I don't
9 remember it ever being stated as a promise which is what you
10 called it. Do you have anything that says it was a promise?

11 A I was quoting Francoise Carrier who referred to it
12 as a promise.

13 Q Do you believe it was a promise?

14 A I believe it was written as what you call a
15 binding element.

16 Q A proposed binding element. And didn't Mr.
17 Dreyfuss, at the Planning Board, comment that, you know, you
18 may need flexibility when this plan goes forward in order to
19 figure out where that street goes, I don't know that you can
20 agree that the two access points will be to Ellsworth and to
21 Pershing. Didn't he say that?

22 A I don't recall if that's a direct quote.

23 Q Do you remember him saying that when I mentioned
24 that we had proposed it to the community, he commented well,
25 you didn't get much in return for it and kind of chuckled.

1 Do you remember that?

2 A I remember he said something like that. I don't
3 remember the specifics.

4 Q Okay. You understand that the binding elements
5 are determined through this zoning process and not
6 beforehand. They can change during the process based on
7 what expectations the community has, what requirements the
8 zoning hearing examiner may have or what proposals the
9 applicant may have.

10 A Without being an expert on this, on this process,
11 I accept that as probably correct.

12 Q You took us through a photo montage of your walk
13 to the Metro.

14 A Walk back.

15 Q Walk back, I beg your pardon, yes. Thank you for
16 correcting me.

17 MR. HARRIS: And by the way, I have no objection
18 to that exhibit.

19 MS. ROBESON: Okay.

20 BY MR. HARRIS:

21 Q What of those elements would change if this
22 project went forward?

23 A The walk into my neighborhood would, once you
24 cross Cedar Street, that would change.

25 Q Well, let's take that here. Okay. This is Cedar

1 Street here and this is you coming up Pershing. Neither of
2 these two houses on the corner is part of this project so
3 neither one of those changes, is that correct?

4 A That's correct.

5 Q There's no change in the street here. Let's go up
6 to the historic house. Nothing is changing in terms of the
7 street itself, is it?

8 A The street itself or what's on --

9 Q The street itself.

10 A Or what's on the sides of the street?

11 Q Well, let's, okay, let's start from the right to
12 left. Nothing is being proposed on the east side of
13 Pershing so there's no change there.

14 A Correct.

15 Q No change is being proposed to the street itself,
16 so there's no change there. The historic house is going to
17 be preserved, correct?

18 A I expect so.

19 Q Yes. That's the proposal. There's a driveway
20 there today. Actually, that gets converted to a small stub
21 of a driveway rather than more of a road that goes into a
22 little parking area then, so there's actually less paving in
23 the front yard of that house under the proposal than there
24 is today, correct?

25 A I don't know.

1 Q You don't know. Okay. So you don't know whether
2 anything will change there or not.

3 A I know that 76 townhouses will be there.

4 Q They won't be on this property.

5 A They will be on the property.

6 Q They'll be over here.

7 A That's correct.

8 Q Yes. But you saw how -- see that landscaping
9 there?

10 A Yes.

11 Q You can't even see back to there.

12 MS. ROBESON: What landscaping are you referring
13 to?

14 MR. HARRIS: Picture 16.

15 MS. ROBESON: Okay. On Exhibit --

16 MR. HARRIS: On Exhibit --

17 MS. ROBESON: 176.

18 MR. HARRIS: 176. Thank you.

19 BY MR. HARRIS:

20 Q You don't know of any change that occurs to that
21 view of Exhibit 16 with the townhouse project.

22 A No. I don't know what the view will look like if
23 you get your way.

24 Q If they leave, if they just shorten the driveway
25 and leave everything else the same in that front yard, that

1 picture doesn't change, does it?

2 A We'd have to take a picture if that happened for
3 me to say that.

4 Q Okay. And isn't there a building up here on the
5 corner of Chelsea, on Springvale and Pershing?

6 A There is a building.

7 Q And is that shown on Exhibit 18 here, or page 18
8 of Exhibit 176?

9 A I believe so.

10 Q You've lived there 12 years, right?

11 A I don't know which building you're referring to.

12 Q Isn't there what used to be a convent and is now a
13 gray siding building --

14 A Yes.

15 Q -- that's directly attached to the rear of the
16 historic house?

17 A Yes. It's there.

18 Q And is it your understanding from this plan that
19 that disappears, that gets demolished?

20 A From that picture, yes.

21 Q Yes. And isn't there a school building further up
22 to the corner that's shown on that page?

23 A Yes.

24 Q Is it your understanding that that gets
25 demolished?

1 A Yes.

2 Q And that instead of those two, there will be a
3 park there. So that's a change. I accept it.

4 A That is a change.

5 Q But a park there, to you, is worse than having
6 that gray sided building and that school building there?

7 A A park is only one part of what makes this worse.

8 Q Well, is a park there better or a building there
9 better?

10 A A park is nice, but looking behind the park at 76
11 townhouses is bad.

12 Q Is a park or a building better on the corner
13 there?

14 A Right now, what we have there is preferable to
15 your plan.

16 Q So buildings there are more compatible than a
17 park.

18 A Right now, what we have here is better than your
19 proposed plan.

20 Q Are buildings more compatible there than a park?

21 A I've answered the question.

22 Q Would a building down here in this area be more
23 compatible than a park, or is a park more compatible?

24 A A building under R-60 would be compatible, would
25 be fine.

1 Q Again, if it's okay in R-60, it's okay. It's
2 compatible.

3 A I will accept development under R-60, yes.

4 Q Okay. You heard Mr. Schlagel (phonetic sp.), I
5 think it was, testify back in May.

6 A Forgive me. Mr. Schlagel is one of my law
7 professors. I think, I think it's Slagle.

8 Q Oh, okay.

9 A I think it's Slagle.

10 Q Okay. I didn't know that. Okay. You heard him
11 testify though.

12 A Here, yes.

13 Q Yes. And he's one of your neighbors, right?

14 A Yes.

15 Q And his house has frontage on Springvale.

16 A Frontage. I believe the front of his house fronts
17 on Springvale Court.

18 Q But it borders --

19 A The side.

20 Q It's on a corner so it borders --

21 A Yes.

22 Q -- on both Springvale and --

23 A Yes. And Springvale Court.

24 Q And he supports the project.

25 A Apparently so.

1 Q So there can be different opinions from people on
2 Springvale as to the compatibility or lack thereof of this
3 project.

4 A Yes.

5 Q I noticed two cars in your driveway on the picture
6 here. Do you and your wife own two cars?

7 A We do.

8 Q And both of you walk to Metro?

9 A We do.

10 Q So contrary to the representations we heard
11 earlier where two cars means two trips, that doesn't
12 necessarily mean that.

13 A Two trips when, in the morning?

14 Q Peak hour.

15 A That could be true, yes.

16 Q And your neighborhood is particularly conducive to
17 walking to the Metro because of that walk that you showed
18 us, the delight of that pathway.

19 A From my perspective, yes.

20 Q You talked about the block bounded by Wayne,
21 Springvale, Pershing and Cedar and your concern about that
22 block.

23 A Yes.

24 Q And do you have any evidence of any intention to
25 develop that property?

1 A Actually, I have heard things.

2 Q Are they owned by single people or, I'm sorry, are
3 they individually owned homes or are they owned by a single
4 owner, the whole block?

5 A No. I actually don't know how that Springvale
6 Terrace runs.

7 Q So you have seen no proposal to develop that
8 property.

9 A I have not seen a proposal.

10 MR. HARRIS: I have no further questions. Thank
11 you for being patient with me.

12 MS. ROBESON: All right. Mr. Brown, do you have
13 any redirect?

14 REDIRECT EXAMINATION

15 BY MR. BROWN:

16 Q Mr. Gurwitz, in responding to Mr. Harris'
17 questions, are there any answers that you felt you didn't
18 have the adequate opportunity to complete your response that
19 you'd like to add to now?

20 A Well, I felt that Mr. Harris was asking me a lot
21 of hypotheticals and I don't really like responding to
22 hypotheticals though I have to under the circumstances.

23 MS. ROBESON: Okay.

24 THE WITNESS: That was the only bad -- if I could
25 go through the transcript and go through hypothetical by

1 hypothetical, if I had more time -- so I will say that.

2 BY MR. BROWN:

3 Q Anything else?

4 A Well, Mr. Harris, I think, was raising absurd
5 hypotheticals about six story multi-family units under R-60.
6 I don't know if that's allowable or not so the extent that
7 any of Mr. Harris' hypotheticals were just completely
8 unrealistic, I would, I would take offense at them having
9 been posed as hypotheticals that can occur.

10 Q Have you seen any demonstration from the applicant
11 comparing the density of Cameron Hills with the density of
12 this project?

13 A I have not seen such a demonstration.

14 Q Have you seen the demonstration of comparison of
15 the density of Cameron Hills with this project that I put in
16 the record?

17 A I don't recall it. I would like to see it if you
18 did.

19 MR. BROWN: Nothing further.

20 MS. ROBESON: All right. Any recross based
21 solely, solely --

22 MR. HARRIS: Yes. Just one quick question. Then
23 I'll relieve Mr. Gurwitz of his pain and punishment here.

24 THE WITNESS: It's a pleasure, Bob.

25 MR. HARRIS: I'm looking for an exhibit that was

1 in here.

2 MS. ROBESON: And what are you, what document are
3 you looking at?

4 MR. HARRIS: Exhibit 111. This was a brochure
5 about EYA and the projects of EYA.

6 RECROSS-EXAMINATION

7 BY MR. HARRIS:

8 Q Would you agree with me that the data table there
9 says that that's 57 units on 2.4 acres?

10 A One second, please.

11 MS. ROBESON: What is 57 units on 2.4 acres?

12 MR. HARRIS: I'm sorry. The density of Cameron
13 Hill.

14 MS. ROBESON: Okay.

15 MR. HARRIS: This is a -- does it have a page
16 number on it, Michael?

17 THE WITNESS: Page no. 27.

18 MR. HARRIS: Page no. 27. I apologize.

19 BY MR. HARRIS:

20 Q It's a summary of Cameron Hill and it shows 57
21 units on 2.4 acres and Dave is doing me the favor of
22 calculating that.

23 A It says that here, yes.

24 Q And what density is that then?

25 A I don't know. Does it say? 23.75.

1 Q 23.75 units, okay, as opposed to the 14.67 that is
2 being proposed at Cameron Hill. Just so that the record is
3 clear, I asked you about that before and I want -- you don't
4 know anything different than what you see here.

5 A I'm not sure what you --

6 Q You have no other information that that density
7 calculation is incorrect so you, I presume, would agree with
8 that.

9 A I don't know much about Cameron Hill beyond what,
10 as far as that kind of information, beyond what you've just
11 shown me.

12 Q Okay.

13 MR. HARRIS: I have no further questions. Thank
14 you.

15 MS. ROBESON: All right. Mr. Gurwitz, thank you.

16 THE WITNESS: You're welcome.

17 MS. ROBESON: You may be excused. Now, we can go
18 until 5:00. If you have a witness that you would like to
19 bring in that, you know, we'll get as far as we can.

20 MR. BROWN: I think a number of these witnesses
21 will not take very long.

22 MS. ROBESON: Okay. Fine.

23 MR. BROWN: Victoria Pierce?

24 (Discussion off the record.)

25 UNIDENTIFIED VOICE: Krista Lutz can't be here on

1 Thursday.

2 MR. BROWN: Okay. Have her come up.

3 (Discussion off the record.)

4 MS. ROBESON: Please raise your right hand.

5 (Witness sworn.)

6 MS. ROBESON: Okay. Mr. Brown?

7 DIRECT EXAMINATION

8 BY MR. BROWN:

9 Q Could you tell us your name and address, please?

10 A Krista Ann Lutz, 710 Woodside Parkway.

11 Q Ms. Lutz, you and I have never met or spoken
12 before, have we?

13 A No.

14 Q You came here today of your own free will to speak
15 about this proposal?

16 A I did.

17 Q Please give us your thoughts.

18 A I live on the corner of Woodside Parkway and
19 Ellsworth which is down a couple blocks from the Chelsea
20 School, but I'm not right up against the Chelsea School. I
21 do have opposition to the proposed townhouses based on a
22 couple of reasons.

23 The number one reason is I think that the 76
24 townhouses they're proposing will dramatically increase
25 traffic on my street. Currently, Ellsworth is a way for

1 people to get from Dale into their own homes but it's not
2 supposed to be used as a through-way into the downtown of
3 Silver Spring although some people do use it as that. I do
4 not notice a lot of traffic on the street. I'm in my yard
5 quite a bit gardening and other things. I like the fact
6 that the street is quiet and that it's not a major
7 throughway and I would like to keep it as such. So my main
8 concern is the increased traffic that the proposed
9 townhouses would bring to the neighborhood.

10 I did see pictures of the townhouses and they do
11 look very nice. However, I don't think that they fit in
12 with the quaintness of the rest of the neighborhood, and
13 just the fact that they are not within the current zoning I
14 take offense to. We recently did a remodel on our home and
15 we were held to all the zonings and the codes and everything
16 that were in place within the County and so I feel that
17 single-family homes, which is what the zoning calls for,
18 would be appropriate. I would welcome that. And that's
19 essentially all I have to say.

20 MS. ROBESON: Okay. Thank you. Mr. Harris?

21 CROSS-EXAMINATION

22 BY MR. HARRIS:

23 Q Ms. Lutz, L-U-T-Z, is that what it is?

24 A Um-hum.

25 Q I'm sorry. And what was your first name?

1 A Krista.

2 Q Krista, okay.

3 A K-R-I-S-T-A.

4 Q Sorry. I don't hear so well and sometimes --

5 A That's okay. I don't either.

6 Q -- I have to ask a second time. You heard Mr.

7 Gurwitz testify now and saying that he would be okay with

8 townhouses if they were built under the R-60 zone. Are you

9 okay with that?

10 A I am not that familiar with what the zoning calls

11 for but my understanding is that the zoning is for single-

12 family detached homes and that's what I would like to see

13 there. If I had my wish, I would like for them to be

14 single-family detached. I live directly catty-corner from

15 where they developed that large field and they put some what

16 they call monster houses in there, and that's a very nice

17 neighborhood and I think that they fit in with the rest of

18 the neighborhood very nicely but I'm not sure that, you

19 know, rows and rows of townhouses would.

20 Q Those monster homes, and I agree, they are pretty

21 big homes compared to the rest, they're pretty close

22 together as well, aren't they?

23 A They are.

24 Q But you find that, I'll call it a wall of

25 buildings, you don't find that to be incompatible with your

1 home or the others on your street?

2 A I don't. Each of them are just a little bit
3 different from one another and they're maintained
4 differently and landscaped differently and so I find them to
5 be very nice.

6 Q There have been several people, now you, who
7 commented about your street being quiet, but there are 700
8 homes in the SOECA area. You're familiar with that.

9 A Um-hum.

10 Q But even with that and whatever cut-through
11 traffic there may or may not be, it still has remained a
12 quiet neighborhood.

13 A Um-hum.

14 Q You don't have any information to suggest that, or
15 to indicate that the addition of 76 townhomes at the very
16 southern end of the community, basically next to the CBD,
17 would change that traffic volume in any way.

18 A Well, it only makes sense that it would if there's
19 currently no houses there and they're going to go to 76
20 houses. My husband and I have three cars and I can imagine
21 that the families there will have at least one car, and so
22 there will at least be 76 more cars traveling --

23 Q Wouldn't they --

24 A -- at some point or another during the daytime.

25 Q Whenever they do travel, wouldn't they be

1 primarily going into the CBD or to Georgia Avenue or, as
2 opposed to back through the neighborhood. Isn't the traffic
3 in your neighborhood primarily coming in the morning from
4 the, I'll call it the north through the neighborhood towards
5 the CBD and to the Metro and from the evening, in the other
6 direction?

7 A I'm not 100 percent sure about that because
8 Ellsworth Drive goes to Dale and you can go one way or the
9 other on Dale. You can either go up toward Colesville and
10 to the Beltway or back down into the town, down toward
11 Wayne, so I'm not sure about that.

12 Q And you're aware that the current traffic
13 restrictions in the neighborhood, that the proposal is to
14 keep those in place, not to change those.

15 A I, I'm not aware of that but people don't follow
16 the current traffic restrictions so there are cars that are
17 going through both ways. Even though it's a one-way street
18 going the one way, they're still coming through.

19 Q Even when they do though, it's still a quiet
20 neighborhood today.

21 A It has been fairly quiet, yes.

22 Q Okay.

23 MR. HARRIS: I have nothing further. Thank you.

24 MS. ROBESON: Mr. Brown, anything further?

25 MR. BROWN: Nothing further.

1 THE WITNESS: Thank you.

2 MS. ROBESON: Thank you, Ms. Lutz. Mr. Brown?

3 MR. BROWN: Is there anyone else who can't come

4 back?

5 MR. HARRIS: Could we possibly start with Ms.

6 Volk? I keep missing --

7 MS. VOLK: Oh, no, because there's people here who

8 can't come on Friday and I, or Thursday rather, and I can so

9 I want to allow people to speak.

10 MS. ROBESON: Is there anyone here that can't come

11 Thursday?

12 MS. PIERCE: Well, I can but it would be very

13 difficult for me.

14 MR. BROWN: Come on up.

15 MS. ROBESON: Well, then why don't you come up.

16 MS. VOLK: Yeah. Why don't you come up.

17 MS. PIERCE: I'm going to need to be near the

18 machine.

19 MR. HARRIS: Oh, this machine?

20 MS. PIERCE: I need to be there, yeah. That

21 machine, yeah.

22 MR. HARRIS: Okay. Pull up a chair.

23 (Discussion off the record.)

24 MS. ROBESON: While he's doing that, can you raise

25 your right hand and I'll --

1 MS. PIERCE: Yes.

2 (Witness worn.)

3 MS. ROBESON: Thank you.

4 (Discussion off the record.)

5 DIRECT EXAMINATION

6 THE WITNESS: My name is Victoria Pierce. My
7 address is 501 Pershing Drive in Silver Spring, a house I've
8 owned and lived in since July of 1996. When I decided to
9 move into downtown Silver Spring, I was aware of my housing
10 choices. I could be an apartment dweller or a townhouse
11 owner or I could purchase a single-family detached home in a
12 community of similar single-family houses. For most of my
13 childhood until 18, I lived in Manhattan in apartment
14 buildings. Lots of people, lots of noise, lots of cars,
15 lots of cement. It has been a joy and an important
16 lifestyle choice for me to live for many years now in
17 Maryland communities of single-family detached homes.

18 In 1996, realizing I could still enjoy quick and
19 easy access to public transit and the other conveniences of
20 Silver Spring Central Business District, CBD, I chose the
21 lowest residential density option of single-family home
22 living. I bought into lawns and backyards with ample space
23 for private outdoor relaxation, peaceful days and quiet
24 evenings.

25 Later, I learned about the Chelsea School which is

1 just a few blocks away. At the World Bank when I was a loan
2 officer for the Kingdom of Morocco, we worked with the
3 Minister of Education to reform the country's education
4 sector. I was touched by that experience and have been
5 impressed with the efforts and success of the Chelsea School
6 at helping children with learning disabilities. Now that
7 the school is closing, we are faced with what should be done
8 with the land.

9 I do not believe Seven Oaks-Evanswood would
10 benefit by inserting into it the 76 townhouses as proposed.

11 The complex would be incompatible with the nature of our
12 community. The densely compressed design is not in keeping
13 with our properties and I perceive the intention of its
14 residents would be far more focused on the CBD than on the
15 interests and concerns of our neighborhood. The nature of
16 community is at the heart of why we are here.

17 I believe the purpose of this re-zoning request is
18 to urbanize the Chelsea School property. The idea is to
19 bring three times the number of households into our
20 community than the R-60 zoning for the site and promote
21 accessibility to the CBD as the primary attraction for
22 potential townhouse buyers. EYA's emphasis on walkability
23 has focused on the ease of entering and using the amenities
24 of the CBD, not on the joys of walking in our neighborhood.
25 Their land use expert has suggested that a section of the

1 CBD be considered part of the Chelsea townhouse community.
2 This re-zoning seems to be a way of bringing the mountain to
3 Mohammad. Since the site cannot be transported into the
4 CBD, just bring the CBD to the site.

5 I see the Chelsea development as just a larger
6 Cameron Hill in a prettier setting. It would consist of
7 narrow row houses with alleyways for cars behind them
8 instead of backyards. However, the Chelsea residents would
9 have safer and in many cases, quicker access on foot to the
10 most desirable destinations in the CBD.

11 Disturbingly, according to the Maryland Department
12 of Assessments and Taxation, 16 of Cameron Hills' 56
13 townhouses are not the primary residents of their owners.
14 That is 29 percent of the owners do not live there, only 71
15 percent do. The numbers -- to match the size of the
16 proposed townhouse complex, I reviewed ownership data of the
17 76 residential properties within our neighborhood estimated
18 as nearest the Chelsea School site. Their streets are
19 marked in orange on this aerial photograph. Let's see which
20 one is the aerial photograph.

21 Michael, we had a -- I don't know which of the
22 little -- and I would like to give out these out as
23 exhibits.

24 (Discussion off the record.)

25 MS. ROBESON: Wait. Let me just ask what -- is

1 this from your prior presentation, Mr. Gurwitz or is this a
2 new --

3 MR. GURWITZ: This is Victoria Pierce's
4 presentation. I just happened to --

5 MS. ROBESON: This is your document?

6 THE WITNESS: Yes, it is.

7 MR. GURWITZ: -- be on my computer.

8 MS. ROBESON: Okay. And --

9 THE WITNESS: And I have copies for you.

10 MS. ROBESON: You have hard copies?

11 THE WITNESS: Yes, I do.

12 MS. ROBESON: Okay.

13 THE WITNESS: This is about the Cameron Hill
14 addresses I just talked about.

15 MS. ROBESON: Okay.

16 THE WITNESS: This is that.

17 MS. ROBESON: Aerial photo.

18 THE WITNESS: Right. And this is about what I'm
19 about to speak about for our current --

20 MS. ROBESON: Okay. Let me do this then. Let me
21 mark, mark the aerial photograph as --

22 MR. HARRIS: This is one set? Okay.

23 THE WITNESS: One set.

24 MR. HARRIS: Thank you.

25 MS. ROBESON: Let me mark the aerial photograph as

1 180, the table with the heading "Cameron Hill Addresses@ is
2 181 and the table marked "76 SOECA Residential Addresses
3 Nearest Chelsea School@ as 182. Do you want to reserve
4 your --

5 MR. HARRIS: No. I'm okay with these.

6 MS. ROBESON: Okay.

7 MR. HARRIS: Thank you.

8 (Exhibit Nos. 180 and 181 and 182 were
9 marked for identification and received
10 into evidence.)

11 THE WITNESS: To match --

12 MS. ROBESON: Go --

13 THE WITNESS: Sorry.

14 MS. ROBESON: Go ahead.

15 THE WITNESS: To match the size of the proposed
16 townhouse complex, I reviewed the ownership data of the 76
17 residential properties within our neighborhood. There is a
18 site, let me just put this out here. You see the orange
19 right around here. Their streets are marked in orange in
20 this aerial photograph. Six of these 76 houses are not the
21 primary residences of their owners. That means 92 percent
22 of those owners live in the neighborhood.

23 I believe, as I know many others do, that
24 homeowners tend to care seriously about the communities in
25 which they live. Absentee landlords, on the other hand, do

1 not tend to invest anymore time, money, energy or
2 consideration in communities of their rental properties than
3 they must to maintain those properties.

4 I believe the Chelsea townhouse complex would be
5 as conducive to the 29 percent owner absenteeism rate as
6 Cameron Hills and that the negative effect on the townhouse
7 community under its compact living conditions would be
8 noticeable. Overall, I find myself questioning the extent
9 of engagement Chelsea residents would have with our
10 community. I can easily envision this large development
11 becoming a somewhat isolated residential island within our
12 neighborhood. Let me just --

13 (Discussion off the record.)

14 THE WITNESS: I was disappointed with the
15 definition of community for the townhouse complex as
16 explained by the Planning Board Chair. A pebble dropped
17 into a pond resulting in ripples diminishing the size from
18 an outer circumference is, in my view, a poor analogy to how
19 a community should be defined. That way of delineating
20 their community, an area within a circle drawn at an
21 arbitrary radius from a housing development, does not strike
22 me as helpful. Not only does it fail to capture the dynamic
23 of community, importantly, it also implies that the impact
24 of the townhouses on the community at large would diminish
25 like ripples over distance.

1 One significant and deliberate impact of
2 development, of the development would not slow to an
3 arbitrary stop at Woodside Parkway which is where the land
4 use expert said that he thought the northern end of the
5 community would end. I am speaking of automobile traffic
6 and would like to expand on John Millson's testimony. With
7 the exception of Dale Drive, the main thoroughfare through
8 our area leading to Colesville Road and the Beltway, traffic
9 within our community is light and we enjoy simple and easy
10 driving conditions in and out of the neighborhood.

11 Because we live in an environment with little
12 traffic, residents of Seven Oaks-Evanswood frequently enjoy
13 walking down our lovely streets. Sometimes a few people
14 abreast, sometimes with strollers and/or dogs. I have
15 driven SOECA's streets day or night, weekdays and weekends
16 throughout the seasons. I have noted patterns of traffic
17 flow in our neighborhood. Experience and common sense
18 caution me that throwing up to 152 new automobiles into the
19 mix would inhibit the freedom of pedestrians and otherwise
20 disturb the neighborhood.

21 EYA's March 2011 traffic study concludes that with
22 the townhouse development, traffic at key intersections in
23 our neighborhood would not exceed Montgomery County
24 congestion standards during rush hour. However, I believe
25 the issue is to what extent the townhouse traffic in general

1 will change the levels of traffic flow we're used to and
2 appreciate. That should be what determines what is
3 appropriate for and compatible with our community.

4 (Discussion off the record.)

5 THE WITNESS: Consider the intersection of Dale
6 and Colesville right up here as the nexus of a traffic
7 magnet that extends south on Colesville to Woodside Parkway
8 and east on Dale to Pershing. Daily, the magnet draws cars
9 from our neighborhood because one, the intersection is
10 located almost equidistant between two nearby Beltway
11 entrances, one on Colesville, the other on Georgia Avenue,
12 which is most easily accessed from Dale. And two, Georgia
13 provides appealing errand destinations such as Snider's
14 Market, Staples, gas stations, Best Buy and Wheaton Plaza
15 all within a 15 minute drive from the intersection at non-
16 rush hours. I, therefore, anticipate this magnet would also
17 attract many of the cars from the townhouse community.
18 Actually, I believe many more of them would move in that
19 direction daily than into the CBD.

20 My house sits at the corner of Pershing and Dale,
21 right here.

22 MS. ROBESON: Which -- I don't know where north is
23 on that.

24 THE WITNESS: North is up here.

25 MS. ROBESON: Okay. So you would be on the --

1 THE WITNESS: South of --

2 MS. ROBESON: -- southwest corner of the
3 intersection.

4 THE WITNESS: Yes. That's correct.

5 MS. ROBESON: Okay.

6 THE WITNESS: I expect a line of cars. This is
7 assuming that, what I'm about to say is assuming that there
8 would be an exit onto Pershing. I would expect a line --
9 from the Chelsea School site, from the development. I would
10 expect a line of cars from the townhouse, townhouses would
11 appear at my front door each weekday morning during rush
12 hours until new drivers figured out to make a left turn onto
13 Dale from Pershing can be dangerous. The intersection is on
14 a hill that produces difficulty for drivers making that
15 turn.

16 To leave their development, therefore, some
17 townhouse drivers might prefer to use Ellsworth Drive or
18 streets off of each Dale or Colesville at any time day or
19 night. And that would mean coming out here, making, coming
20 out on Pershing, making a left on Pershing, then making a
21 left on Springvale or moving down Pershing, making a left on
22 Mayfair, moving down Pershing, making a left on Woodside
23 Parkway and once they got onto Ellsworth, either going all
24 the way to Dale or continuing on Woodside Parkway to
25 Colesville Road or going down Ellsworth taking a left on

1 Rowen to Colesville Road or part of the way up Rowen, taking
2 a right onto Kingsbury to get to Dale.

3 The impact of traffic from the townhouses moving
4 northwest would infiltrate that whole sector of our
5 neighborhood right here. From the intersection of
6 Colesville and Dale, drivers would turn down Dale and then
7 proceed south on Ellsworth towards the complex of continue
8 down to Pershing and proceed south on Pershing towards the,
9 towards the complex. To me, the expected significant
10 increase in traffic flow generated by the townhouses and the
11 associated noise qualify as inappropriate for and
12 incompatible with our community.

13 And I do have another, I do have a copy of this.

14 MS. ROBESON: Okay. And this will be 183, traffic
15 magnet.

16 MR. HARRIS: Oh, thank you.

17 (Exhibit No. 183 was marked for
18 identification.)

19 THE WITNESS: EYA and its land use expert assert
20 that the Chelsea School block should be used to create a
21 transition property between SOECA and the CBD. They argue
22 that their proposed development would be some type of
23 extension of a transition already provided by the Cedar
24 Street properties. I ask myself, what do I think a
25 transition property should do, what function or functions

1 should it serve? I think that an effective transition
2 property would benefit one or both, would benefit one or
3 both communities on either side of it. In our case, that
4 would be to shield us from the CBD visually and audibly with
5 property that would blend well with the physical
6 characteristics of our community. Fortunately, the houses
7 along Cedar Street do just that.

8 Recently, one weekday afternoon, I visited
9 neighbors on Springvale Road who gave me a tour of their
10 backyard. Beyond it was another deep backyard and the back
11 of a house. Although I knew where I was, I could not help
12 but ask what street does that house face? They said Cedar
13 Street. I was impressed. I heard no automobile traffic and
14 CBD buildings were hardly noticeable in the distance with
15 the exception of a lovely church steeple. I remarked this
16 buffer thing really works. In fact Cedar, according to the
17 Silver Spring master plan, is expected to separate us
18 comfortably from the rest of downtown and indeed, has done
19 so effectively for many years.

20 The Planning Board believes, however, that the EYA
21 townhouse complex would benefit our community by providing
22 more transition. Why do they think we need or want more?
23 To re-zone the Chelsea School site as requested would mean a
24 progression of residential density from the CBD to R-60, the
25 Cedar Street properties, to RT-15, then back to R-60, the

1 interior of our neighborhood. In other words, far from
2 providing a buffer from the urban CBD, the townhouses would,
3 quote, "transition us", unquote, from our own zoning back to
4 our own zoning with high urban level density in between.
5 That obviously defeats the purpose of a transition.

6 My neighbors and I have spent considerable time
7 and exerted considerable effort to participate in what we
8 take in good faith to be a transparent process of
9 deliberation for the consideration of the EYA re-zoning
10 request. However, after our experience with the Planning
11 Board, I certainly have begun to doubt whether the criteria
12 we assume are the bases for the County's decisions regarding
13 that proposal are the only ones. The Board's apparent
14 disregard of the intent of the master plan, at least our
15 disagreement with their interpretation of that, regarding
16 north and west Silver Spring and certain explicit zoning
17 standards particularly pertaining to transition and
18 compatibility make me wonder if other factors such as tax
19 revenue were at play.

20 As a resident of Montgomery County for 34 years
21 and a homeowner during that time, I have questioned some of
22 the County's land use decisions in the past few years that
23 have clearly been driven by revenue interests. In the CBD
24 of Silver Spring, we seem to be watching development for
25 development's sake rather than as a result of thoughtful

1 planning. Much of the newer office space is empty.

2 (Discussion off the record.)

3 MS. ROBESON: Now, which pictures? Are these Mr.
4 Gurwitz's pictures?

5 THE WITNESS: No.

6 MR. HARRIS: No. New ones.

7 THE WITNESS: These are mine.

8 MS. ROBESON: Okay.

9 THE WITNESS: These are new ones.

10 MS. ROBESON: Just checking.

11 THE WITNESS: These are new ones.

12 MS. ROBESON: Okay. I'm going to mark these 184A,
13 B and C.

14 (Exhibit Nos. 184A, B and C were marked
15 for identification.)

16 THE WITNESS: Okay. Much of the newer office
17 space is empty, and these four pictures are examples of
18 space being leased for office space. Perhaps it's a field
19 of dreams philosophy. If we build it, they will come. I
20 guess the serious hope is that new housing in the CBD will
21 save the day, bringing new consumers there.

22 Apartment house vacancies in the commercial
23 district are common too. There's Colesville Towers is
24 leasing. I think this other building may be across from
25 Cameron Hill. I'm not sure. I don't think it's far from

1 Cameron Hill. Yeah. Here are a couple more. The one on
2 the right is on Georgia. However, hundreds of new units are
3 planned for construction soon in anticipation of a
4 Montgomery County population boom. Clearly, at the
5 density proposed, the EYA townhouse complex belongs in the
6 CBD. My neighbors and I are hoping the County will
7 demonstrate support of sound land use management of Seven
8 Oaks-Evanswood by denying EYA's zoning request. Let us
9 continue to enjoy what we invested in, a lovely quiet
10 community with lots of greenspace and charming homes at the
11 residential density established by our R-60 zone. That's
12 it.

13 MS. ROBESON: Thank you.

14 THE WITNESS: Sure.

15 MS. ROBESON: Mr. Harris?

16 MR. HARRIS: Yes.

17 MS. ROBESON: Or Mr. Brown, do you have any
18 followup questions?

19 MR. BROWN: Just a couple, yes.

20 MS. ROBESON: Go ahead.

21 BY MR. BROWN:

22 Q Ms. Pierce, when were these photos in 184A, B and
23 C taken?

24 A A few days ago.

25 Q Looking back to your calculations on 181 and 182,

1 if I understand this correctly, you're telling us that at
2 Cameron Hill, 16 of the 56 units are not owner-occupied.

3 A They're not the primary residences of the owners,
4 that's correct.

5 Q That would be about 28 percent, right?

6 A That's 29 percent.

7 Q And on 182, you're telling us that of the 76
8 residences nearest the Chelsea School site, six are not
9 owner-occupied.

10 A Are not primary residences of owners, that's
11 correct.

12 Q And that would be about seven percent.

13 A Eight percent, or seven percent. That's correct.

14 Well, a little less than that. Q The rate of nonowner
15 occupancy at Cameron Hills is about four times as great as
16 it is in the immediate neighborhood. Is that what you're
17 telling us?

18 A It's 8 versus 20, 29 percent. It's eight percent.

19 Q Okay. That's about four times.

20 A Four is a little --

21 Q About four times, right?

22 A Almost four times. Almost four times. Well,
23 three-and-a-half.

24 MR. BROWN: I have nothing further.

25 MS. ROBESON: All right. Mr. Harris, any recross

1 based solely on -- oh, no. It's your turn.

2 MR. HARRIS: I knew what you meant. Yes. Thank
3 you.

4 CROSS-EXAMINATION

5 BY MR. HARRIS:

6 Q Just to defend Francoise Carrier and the pebble
7 thing, do you understand that she was talking about
8 neighborhood for zoning purposes. That's different than the
9 neighborhood in which you live. That there's a requirement
10 in Maryland for zoning interpretation to define a
11 neighborhood and it's not, it can be a commercial area, it
12 could be half commercial or commercial/residential, that she
13 wasn't talking about what your neighborhood, SOECA was.

14 A Well, she wasn't talking about SOECA but my
15 impression in that discussion, as well as subsequent remarks
16 of your land use expert, was that there seemed to be some
17 implication that there was a definition of community coming
18 out of all of this and that was, that was certainly my
19 interpretation.

20 Q Okay. I --

21 A And particularly, emphasis on the CBD. All the
22 focus seemed to be on it doesn't really matter what's
23 happening north. What's important is that this piece of
24 land is focused on the CBD and considered that part of that
25 community so --

1 Q Okay. I think Mr. Brown can explain that to you
2 later. In terms of the rental, the nonowner-occupied here,
3 I'm interested, that doesn't look as though you counted in
4 your area any of the homes that front on Cedar Street.

5 A That's correct.

6 Q Any of those blocks.

7 A That's correct.

8 Q Why didn't you count those?

9 A Cedar or Colesville for that matter.

10 Q Why didn't you count those?

11 A Well, the -- first of all, I would expect higher
12 owner absenteeism there given the licensing option for these
13 structures.

14 Q Right. So it would have, it would have --

15 A And they're locations across from the CBD and of
16 course, on Colesville, you've got a main thoroughfare where
17 you've got an office and a, and you've also got a commercial
18 enterprise and so on.

19 Q So it would have changed your numbers considerably
20 had you included them because they would be primarily
21 nonowner-occupied.

22 A It's, it's -- the purpose of the comparison was to
23 take what we knew was a residential area that has only one
24 purpose, and that was residential as opposed to business.
25 If we took, if we took Cedar Street properties or some of

1 the Colesville Street, Colesville Avenue properties, we'd be
2 combining apples and oranges.

3 Q Well, I --

4 A So to, so to compare residential to residential,
5 because Cameron Hill is residential, we chose to go internal
6 to the neighborhood.

7 Q So are you saying the properties along Cedar then
8 are nonresidential?

9 A Some are, some are not.

10 Q Yes.

11 A They're -- it's apples and oranges.

12 Q Right. So but had you included them, it would
13 have changed your numbers considerably.

14 A Yes. Had we included it, it would have changed
15 the numbers.

16 Q And those are basically along the CBD. You would
17 agree that houses within the CBD are different than houses
18 outside here in terms of owner-occupied conditions.

19 A Houses within the CBD are different conditions.

20 Q So you would expect a higher nonowner --

21 A I would expect.

22 Q -- occupied condition --

23 A I would.

24 Q -- in the CBD.

25 A I would.

1 Q Okay.

2 A Which is why we went internally to do that.

3 Q Right.

4 A To the neighborhood.

5 Q Right. And so in fact, since Cameron Hill is in
6 the CBD, you would expect a higher nonowner occupancy there
7 just by natural conditions.

8 A Well, it's an interesting thing that you're
9 saying, yet I was not surprised at the owner, the owner
10 situation there but what I'm saying is that what we seem to
11 be looking at is a, as I say, an urbanization of the Chelsea
12 School site. And so I think the people who are going to be
13 attracted to this site, the owners and so on, are people who
14 have that kind of same sort of urban orientation and I think
15 in that context, you may very well find, over time, the same
16 kind of absenteeism rate.

17 Q Do you have any data on that phenomenon or where
18 did that --

19 A Oh, I don't think it's a phenomenon. It's just me
20 reflecting.

21 Q Okay. Okay. I accept that.

22 A Okay.

23 Q And you're aware that the Cameron Hill townhomes
24 were built in a very different time frame than would be the
25 Chelsea Court. They were built more than 10 years ago.

1 A Yeah. They were built in 2000.

2 Q Right.

3 A Yeah.

4 Q And that was a time when housing prices were
5 starting to escalate, wasn't it?

6 A Yes. It was kind of in the bubble.

7 Q And a situation where a number of people were
8 buying homes as investments as a hedge against inflation
9 whether they were going to live there or not --

10 A Although I don't --

11 Q -- but they were good investments.

12 A Well, I don't, I don't know. In fact, I don't
13 know how many of these owner-occupied, owner non-occupied
14 houses have been in that condition for how long. In other
15 words, I don't know whether this started for most of them a
16 couple years ago or five years ago or 10 years ago.

17 Q If there were testimony that from the outset,
18 because of the escalating housing prices, that there was a
19 phenomenon then of people, nonowner residents buying homes
20 as an investment and then renting them out with the hope of
21 making a profit when they would flip them later, that
22 wouldn't surprise you to hear that, would it?

23 A No. That wouldn't.

24 Q And what happened then in the last several years
25 was that those housing prices did not escalate, did they?

1 A I don't know what happened to Cameron Hill.

2 Q Housing prices in Montgomery County.

3 A In general have not escalated.

4 Q No. In fact --

5 A Not much. Not much.

6 Q -- they've declined by 20 or 30 percent.

7 A Oh, I don't know. I didn't know. I didn't know
8 that.

9 Q If the evidence showed that they declined by 20 or
10 30 percent in the last five years, then wouldn't it seem
11 logical that somebody who had invested to sell it had to
12 hold onto it and rent it out and was essentially forced into
13 that condition?

14 A That would be --

15 Q That could be. But that's not the --

16 A That could be.

17 Q -- condition today. Housing prices are not
18 escalating today so --

19 A Well, they're not escalating today but we're
20 talking about putting into place a complex that's going to
21 last, well, I would think EYA would want it to last a very
22 long time, and so trying to predict what the economic
23 conditions are going to be five years from now or whatever I
24 think is not, isn't worthwhile.

25 Q No. We don't know the future but we have some --

1 A Yeah. We really don't.

2 Q -- indication of likelihood of certain events.

3 A Well, I really, I really think that these, that
4 these kinds of -- I really think that this is very akin to
5 urban housing. I mean, I kind of don't let a few trees fool
6 you. I think that the greenspace that's there on each end
7 is not really what's, what this housing project is about.
8 These rows of little townhouses I think really do connote
9 urban density and I think the orientation toward the CBD
10 does and so I think over time, hopefully, as the recession
11 alleviates and the economy gets better, I think you may very
12 well find a different, a high owner absenteeism.

13 Q Is Georgetown urban density?

14 A Georgetown?

15 Q Georgetown.

16 A Washington, D.C. Georgetown?

17 Q Washington, D.C. Georgetown.

18 A Yeah.

19 Q Yes. Do you think there's a high nonowner-
20 occupied rental situation there?

21 A Oh, I'm not saying in all high-density situations
22 there's high owner absenteeism. I'm not saying that.

23 Q Okay. In fact --

24 A I'm just comparing this to Cameron Hill.

25 Q This being the --

1 A The Chelsea School.

2 Q -- the several streets --

3 A No, the development.

4 Q -- that you selected.

5 A Yes. But I'm comparing the --

6 Q But left out some.

7 A Well, I didn't leave out any. The Chelsea School

8 site development to Cameron Hill.

9 Q Okay. And you would agree that they're very

10 different situations, wouldn't you? Well, let's start. Are

11 the prices different? Do you --

12 A I don't know.

13 Q -- know what Cameron Hill townhomes are selling

14 for?

15 A Well, I suspect they're selling for anywhere

16 between 400,000 and half a million or so.

17 Q And have you heard what Chelsea --

18 A Or 600,000 maybe. I don't know. About 600,000.

19 Q You wouldn't expect these homes at Chelsea Court

20 to sell for more?

21 A I have heard through the rumor mill so many

22 variations on what those houses are going to cost. I really

23 wouldn't even begin to venture --

24 Q The more --

25 A -- what this gentleman has in mind in terms of

1 pricing his houses.

2 Q I think you'd accept though that the more
3 expensive the house is, the less likely it would be a rental
4 property.

5 A I think that tends to be true but I also think
6 that regardless of what you, what price you put on a house
7 to retail it in the beginning, the market will say what that
8 house is going to cost. And so you may put it out on the
9 market for \$800,000 and find that it's not going to sell for
10 that.

11 Q Are you a traffic engineer?

12 A I am not a traffic engineer.

13 Q I didn't think so.

14 A I am not a traffic expert.

15 Q Indeed. And so when you're estimating traffic
16 impact, it's simply as a layperson.

17 A Well, it is.

18 Q And when you, I think you mentioned that you were
19 talking about 150 cars. You're not suggesting there would
20 be 150 peak hour trips to or from this project, are you?

21 A No.

22 Q And when you were comparing the traffic, you
23 weren't subtracting out the traffic that the Chelsea School
24 exists today so that whatever result in traffic there would
25 be in the future if Chelsea Court is built, it's not total

1 additional traffic. You have to subtract out the Chelsea
2 traffic, the Chelsea School traffic, right? That's traffic
3 on your streets today.

4 A Yes. That's true.

5 Q Okay. And in fact, if it turned out that the
6 Chelsea School traffic were greater than the Chelsea Court
7 traffic in the future, that would mean there would be a
8 reduction in the traffic.

9 A Well, what you have -- the problem with these
10 comparisons with the school I think is the lack of
11 recognition that first of all, the school isn't in session
12 during the summer. It's not in session on the weekends,
13 it's not in session in the evenings, it's not in session on
14 holidays, it's not in session on vacation, so yeah. And
15 also, you've got -- when you talk about traffic and of
16 course, in the traffic report, they talk about peak hours
17 but these cars can come in and out 24/7 all year around
18 basically. It's a very different kind of comparison. It's
19 sort of, it's just a very different type of comparison.

20 Q Can they come into your houses in SOECA 24/7?

21 A Excuse me?

22 Q Do cars come and go from the houses in SOECA 24/7?

23 A Well, I tend to sleep at night so I don't really
24 know.

25 Q Wouldn't you expect their travel patterns to be

1 pretty darn --

2 A A little lighter. A little lighter in the
3 evening.

4 Q Wouldn't they be pretty darn close to the same
5 hours of operation as a townhouse owner?

6 A Oh, oh, oh.

7 Q Townhouse owners --

8 A Yes.

9 Q -- don't go to bed earlier or later. They --

10 A Yes. That's correct.

11 Q Yes. Okay. So --

12 A That's correct. I thought you were going to ask
13 me about the school.

14 Q No, no, no. Back to the rental issue, SOECA
15 doesn't have a homeowners association that takes care of
16 lawns for people, does it?

17 A SOECA does not, no.

18 Q No. People are responsible for taking care of
19 their own lawns.

20 A Yes.

21 Q And so if there's an HOA for a project like
22 Chelsea Court, that assures the community, both the
23 residents there and anyone else, that the lawns and the
24 grounds are taken care of irrespective of whether it's
25 owner-occupied or rental property.

1 A Yes. That's true.

2 Q In terms of the leasing here, the pictures in
3 Exhibit 184, wouldn't you agree with me that at least three
4 of the four, if not all of the four, are retail properties
5 at the ground floor level of these buildings?

6 A Um-hum.

7 Q And I would agree with you that there is a retail
8 issue in Silver Spring from --

9 A I didn't say anything --

10 Q -- vacancies, right?

11 A Retail and office and all that, yes.

12 Q Yes. But these are not office. They're retail.

13 A Okay. Fine. It's business.

14 Q And doesn't, don't more homes in the community
15 help to support retail and --

16 A Well, that's what I was --

17 Q -- make it thrive?

18 A That's what I was saying in my testimony, that the
19 hope was that Silver Spring would bring in more, more
20 residents to do exactly that.

21 Q Yes. Okay.

22 A And there are a lot of apartment vacancies in the
23 CBD.

24 Q Apartment vacancies?

25 A Yes, there are. Page, pages 2 and 3.

1 Q Well, the fact that there's a sign out leasing
2 apartments --

3 A Well --

4 Q -- if there were 500 apartments there and one was
5 vacant --

6 A Yes. But --

7 Q -- wouldn't you put out a leasing sign?

8 A Yes. But they're really, you kind of drive
9 through the CBD and it's, it's kind of around. It's
10 really --

11 Q Wait a minute. You're not telling me you can
12 drive by the Georgian Towers and tell me what their vacancy
13 rate is, can you?

14 A No, I cannot today.

15 Q No.

16 A No.

17 Q And so if there's one unit vacant there, they'd
18 have that sign out.

19 A Yes. That's true.

20 Q So you don't have any --

21 A I don't have numbers on that.

22 Q Okay.

23 A That's correct.

24 MR. HARRIS: I have no further questions.

25 THE WITNESS: Okay.

1 MR. HARRIS: Thank you very much.

2 THE WITNESS: Sure.

3 MS. ROBESON: And, Mr. Brown?

4 MR. BROWN: Nothing further.

5 MS. ROBESON: All right. We will adjourn for the
6 continued, adjourn for the -- yes?

7 UNIDENTIFIED VOICE: Can I just ask one favor?
8 Can I introduce something into evidence just so I don't have
9 to bring it back on Thursday?

10 MS. ROBESON: What is it?

11 UNIDENTIFIED VOICE: It is a visual description of
12 the Chelsea property and the Riggs-Thompson house and the
13 different historical settings.

14 MS. ROBESON: Well, you have to take the time to
15 explain that.

16 UNIDENTIFIED VOICE: I know. But okay. I mean, I
17 just wanted to introduce it into evidence so that it's here
18 when I come on Thursday but if that's not possible, I'll
19 take --

20 MS. ROBESON: But if you're coming on Thursday.

21 UNIDENTIFIED VOICE: I am coming on Thursday

22 MS. ROBESON: Okay. Then it would be better to --

23 UNIDENTIFIED VOICE: That's fine. I'll take it
24 back --

25 MS. ROBESON: -- bring it on Thursday.

1 UNIDENTIFIED VOICE: -- and bring it back. I just
2 don't want to get stuck in the rain.

3 MS. ROBESON: Okay.

4 UNIDENTIFIED VOICE: All my work.

5 MS. ROBESON: Well, I'm going to ask you to bring
6 plastic or something.

7 UNIDENTIFIED VOICE: It's fine. It's fine.

8 MS. ROBESON: All right. Thank you, Ms. Pierce.
9 We're going to --

10 MR. HARRIS: Before we go off record, one thing.
11 I don't know whether it has to be on the record or not as
12 far as planning ahead for Thursday. Mr. Brown was kind
13 enough to give me a list of the people that he expects to
14 testify and then knowing that we had two rebuttal witnesses
15 as well, it's going to be a busy day and I thank you for, in
16 the past, going beyond the normal hour. Can we impose on
17 you and each of us to stay later on Thursday if we need to
18 so that we can finish?

19 MS. ROBESON: Yes.

20 MR. HARRIS: Okay.

21 MS. ROBESON: I'll make sure that we have
22 sufficient time. I would ask you, I'm concerned about --
23 all of your testimony, at least on the traffic, has been
24 with the two entrances on Pershing and Ellsworth and I
25 think, you know, one of the citizens brought up but I do

1 agree with them, that some of compatibility, it's not just a
2 peak hour volume issue. It's also movements in the
3 neighborhood and I don't feel comfortable with just the
4 passing references to how it's going to work or even why
5 you're adding, you know, that element at this time.

6 MR. HARRIS: The element? I'm sorry.

7 MS. ROBESON: Of having, not having --

8 MR. HARRIS: Oh.

9 MS. ROBESON: -- the Private Street A exiting as
10 it's shown on the schematic development plan.

11 MR. HARRIS: Okay. We can -- there's a reason
12 that we're talking about it and I'm happy to have someone
13 speak about that.

14 MS. ROBESON: Okay. I'd just, I'd just like to
15 address how that flow --

16 MR. HARRIS: I understand.

17 MS. ROBESON: -- is going to be compatible because
18 of I know you're leaving in place the traffic restrictions
19 but I think there's been some testimony here that generally,
20 the impact of cutting through the neighborhood is going to
21 be increased.

22 MR. HARRIS: Okay. Fine.

23 MS. ROBESON: So with that, we will do our best to
24 make sure we can stay late on Thursday. We're going to take
25 Mr. Brown, or both, we're going to take the expert witnesses

1 first and then we will fit as many people as we can in and
2 we'll go from there. So with that, we're adjourned until --
3 yes, sir.

4 MR. BROWN: I just wanted to get from Mr. Harris
5 the name of the rebuttal witnesses.

6 MR. HARRIS: Oh, sure. Mr. Iraola and Mr.
7 Youngentob. And in light of Ms. Robeson's comments, I may
8 ask Mr. Wells to come back.

9 MR. BROWN: Okay.

10 MR. HARRIS: Or Chris Cabott with his daughter.

11 MS. ROBESON: Don't do that.

12 MR. BROWN: My clients and I have got to discuss,
13 we haven't discussed yet the possibility of a written
14 closing argument instead of an oral one. Do you have any
15 preliminary thoughts on that considering that we're going to
16 be running late on Thursday anyway?

17 MS. ROBESON: Well, I want to give you as much
18 opportunity as possible to comprehensively address the
19 issues because this is a, this is a very sensitive area. If
20 you would prefer closing arguments in writing, that's fine.

21 I can also attempt to look for another date to have oral
22 arguments but I haven't done that yet.

23 MR. BROWN: I'd like to hear Mr. Harris on this as
24 well.

25 MR. HARRIS: I'm personally fine with closing

1 arguments in writing if that's what Mr. Brown is suggesting.

2 Alternatively, if we're not going to do that, I would like
3 to make sure that we have a date, a time to do that so that
4 we don't have to wait until October or something like that.

5 MS. ROBESON: How many witnesses do you have for
6 the next hearing, Mr. Brown?

7 MR. BROWN: Let's see.

8 MS. ROBESON: I know Ms. Cirillo and --

9 MR. HARRIS: Mr. Doggett.

10 MS. ROBESON: Doggett, yes.

11 MR. BROWN: Looks like seven.

12 MS. ROBESON: And then you have possibly three
13 rebuttal witnesses so --

14 MR. HARRIS: Two-and-a-half or so.

15 MS. ROBESON: That's a lot of witnesses.

16 MR. BROWN: No. I'm mistaken. 1, 2, 3, 4, 5, 6,
17 7, 8, 9, 10, 11, 12, 13. It looks like it could be as high
18 as 13.

19 MS. ROBESON: Let me do this. Let me check with
20 our administrator on whether we have any earlier dates.
21 There have been some rearrangements in some other hearings
22 but quite frankly, I don't know what they are.

23 MR. BROWN: Okay.

24 MR. HARRIS: She's probably gone for today. You
25 wouldn't be able to check now.

1 MS. ROBESON: She is. So what I'm going to say is
2 that I can contact both of Mr. Brown and Mr. Harris. I know
3 that not everyone is represented by Mr. Brown that's here
4 today so if you want to receive notice, I would strongly
5 suggest that you provide your email address at the next
6 hearing to our administrator and we will try to get that out
7 but whatever we do will be announced at the next hearing. I
8 just don't know in advance what the dates could be. I do
9 know we had a couple of postponements for some of our July
10 hearings.

11 MR. HARRIS: I wasn't clear whether you were
12 recommending closing arguments in writing or just --

13 MR. BROWN: I have to discuss the finances with my
14 client because it takes a lot more of my time to write an
15 argument than to speak it, and we haven't had that
16 conversation yet so --

17 MR. HARRIS: Okay.

18 MR. BROWN: My preference would be --

19 MR. HARRIS: I recommend the writing then.

20 MR. BROWN: My preference would be to do it in
21 writing because I can do a better job in writing than I can
22 orally but I don't know that the clients have got the
23 wherewithal to do that, but I'll find out.

24 MS. ROBESON: Okay. Why don't we do this then. I
25 will check for additional dates. As I said, I remember

1 there were some that were thinking of postponing their July
2 hearings but I don't know exactly what happened. I will
3 look for that. You consult with your client. We'll convene
4 back here on the 30th, June 30th at 9:30. And I will be
5 communicating with both of you in the meantime about
6 potential dates and anyone who leaves their email address,
7 all right?

8 MR. BROWN: Okay.

9 MR. HARRIS: Thank you.

10 MS. ROBESON: Thank you. We're off the record.

11 (Whereupon, at 5:14 p.m., the proceedings were
12 concluded.)

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% Digitally signed by Josephine Hayes

ELECTRONIC CERTIFICATE

DEPOSITION SERVICES, INC., hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings before the Office of Zoning and Administrative Hearings for Montgomery County in the matter of:

Chelsea School

Case No. G-892

By:

Josephine Hayes

Josephine Hayes, Transcriber